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FOR THE PUBLICATION OF

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LXXIII. The Admission Register of the Manchester School, with some Notices of the more distinguished Scholars. Edited by the Rev. JEREMIAH FINCH SMITH, M.A., Rector of Aldridge, Staffordshire, and Rural Dean. Vol. II., from A.D. 1776 to A.D. 1807. *pp.* v, 302.

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REMAINS

HISTORICAL & LITERARY

CONNECTED WITH THE PALATINE COUNTIES OF

LANCASTER AND CHESTER.

PUBLISHED BY

THE CHETHAM SOCIETY.

VOL. LXXIX.

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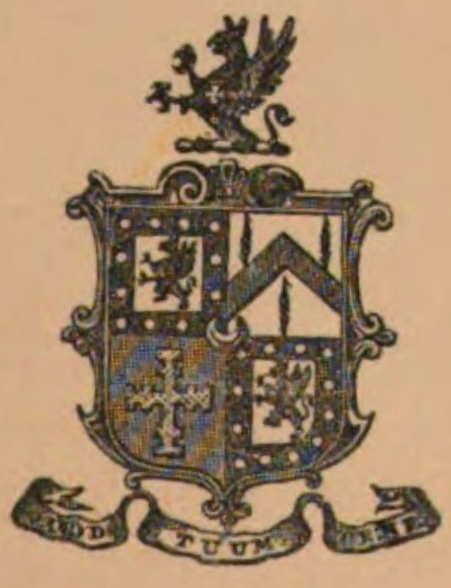

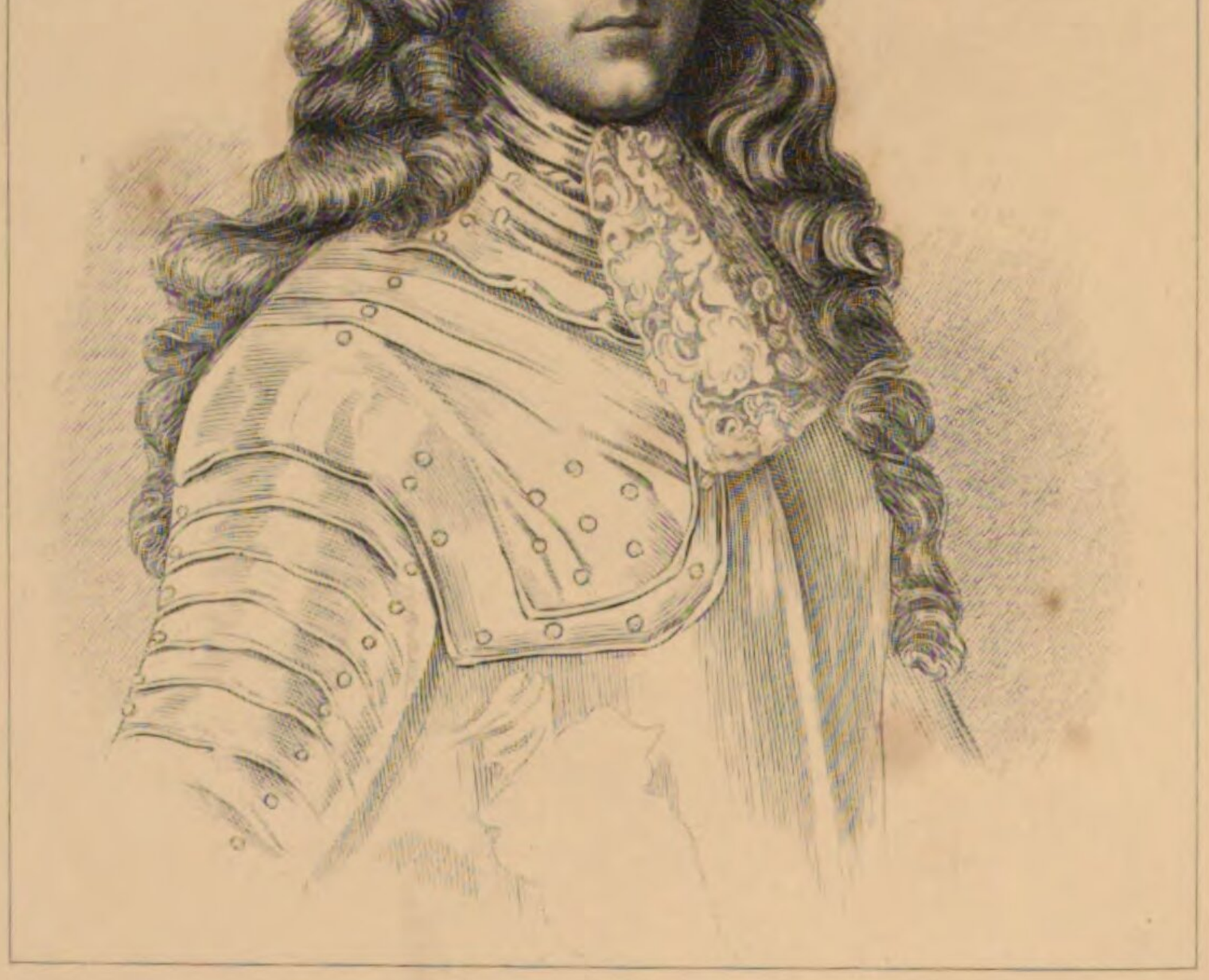

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TRACTS

WRITTEN IN THE CONTROVERSY RESPECTING THE
LEGITIMACY OF

AMICIA,

DAUGHTER OF

HUGH CYVELIOK,

EARL OF CHESTER.

A.D. 1673—1679.

BY SIR PETER LEYCESTER, BART. AND
SIR THOMAS MAINWARING, BART.

Reprinted from the Collection at Peover.

EDITED, WITH AN
INTRODUCTION,
BY
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(Remains)

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PRINTED BY CHARLES S. SIMMS,
MANCHESTER.

A REPLY TO AN ANSWER

To the DEFENCE of

AMICIA,

Daughter of

HUGH CYVELIOK

EARL of *Cheſter.*

Wherein it is Proved,

That the *REASONS* Alleadged by

Sir Peter Leiceſter,

In his former *Book*, and alſo in his ſaid *Anſwer*, concerning the Illegitimacy of the ſaid *Amicia*, are invalid, and of no weight at all.

By Sir **Thomas Wainwaring** of **Peover** in *CHESHIRE*, Baronet.

London, Printed for *S. Lowndes* over againſt *Exeter*-Houſe in the *Strand*. 1673.

[1]TO [Page 1.]

Sr PETER LEICESTER,

BARONET.

THe Reaſons which you and I have alledged for and againſt *Amicia*, being now made publick, all Perſons may eaſily judge, whether, (as you believe) it was onely the zeal of my opinion touching her Legitimacy, which cauſed me to endeavour to incline the world to concur with me therein, or that what I ſaid was ſupported with juſt Grounds and Reaſons; and I doubt not but thoſe of our County that are underſtanding Perſons, will as eaſily diſcern from ſome of your omiſſions, (although I forbear publickly to take notice of them) that it [2]was ſomething elſe beſides your great love to Truth (pretended [Page 2.] by your alledging the old Rule of *Ariſtotle*,) which occaſioned you thus to aſperſe your deceaſed Grandmother. But however things are, you have no reaſon to ſuſpect any animoſities betwixt us, I having in my firſt Book (as I hope I ſhall alſo do in this) endeavoured to avoid all expreſſions, which I did conceive might be offenſive, and I am confident you have no juſt cauſe to be angry with me, for endeavouring to defend a deceaſed Grandmother whom I ſuppoſe to be very much injur'd by you.

I know not how far your memory will fail you therein, but I

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am ſure I have ſeveral times moved you (and particularly came once purpoſely to you to *Tabley*) to deſire that you would be contented to deliver what you did conceit concerning *Amicia*, as an uncertainty onely, (as you had done that of *Roger*, Son of *Hugh Cyveliok*) and did at all thoſe times aſſure you that if you
[Page 3.] would ſo do, and withal, expreſs that ſome *Judges* and *He-*[3]*ralds* were of a different judgement from you, that I would never trouble you or the Reader with any Lines of mine. And the reaſon why I deſired you thus to do, was, becauſe the Reader would certainly conclude *Amicia* to be a Baſtard, though no reaſons were alledged, if he ſaw one who was deſcended of her, to declare her illegitimate in Print, and did not know that ſome Learned Men were of a different opinion; but I could not poſſibly prevail with you herein. And although what you alledge be true, *that there is no medium betwixt being a Baſtard and Legitimate, but that a Man muſt abſolutely be the one or the other*, yet, as to the Writer of an *Hiſtory*, the caſe may be different; for he may be certain, that ſome, concerning whom he writes, may be Legitimate, and others may be Baſtards, and accordingly he ought ſo to place them; but it is poſſible there may be ſome which he is uncertain, whether they be Baſtards or not; and in that caſe the Hiſtorian ought to expreſs it doubtfully, and not to take upon him abſolutely to determine the point upon uncertain grounds.

[Page 4.] [4]As to your ſaying in the fourth page of your Anſwer, in the Margent, that *you apprehend not why I call Sir* Ralph Mainwaring, *Chief Juſtice of* Cheſter, *when in thoſe Ages there was only one Judge at a time there.*

My reaſon wherefore I ſo did, was becauſe I found that *Reginald Gray*, who was Judge of *Cheſter*, had taken unto him as an Aſſociate, *Ralph Hegham*, in the thirteenth year of King *Edward* the I. as appears page 172. of your *Hiſtorical Antiquities:* as alſo, becauſe I found in your ſaid Book, before the time of Sir

Ralph Mainwaring, two Deeds of *Randle de Gernoniis*, (which ſeemed to imply, that there had been ſometimes more Juſtices of *Cheſter* than one at a time,) the one of which as appears, page 128. was directed, *Conſtabulario, Dapifero, Baronibus, JUSTICIARIIS, &c.* and the other, as you may ſee, page 160. was directed, *Epiſcopo Ceſtriæ, Dapifero, Baronibus, JUSTICIARIIS, &c.* ſo that I hope, I am juſtifiable herein.

And though it was not uſual till after ages, to have two Juſtices of *Che-*[5]*ſter* at one time, and that I have not yet found, that in the time of *Ralph Mainwaring*, there was any Juſtice of *Cheſter*, but the ſaid *Ralph*, yet it being poſſible for the reaſons aforeſaid, that there might be more than one at a time; I did therefore call the ſaid *Ralph*, Chief Juſtice, to ſhew if there were then two, that he was the chief of them, becauſe he acted as Juſtice of *Cheſter* alone, as will thus appear from a Roll of antient Charts, called *Doomesday*, remaining in the Caſtle of *Cheſter*, amongſt the Records there. [Page 5.]

Leuca quæ fuit uxor Ranulphi de Kingeſleigh veniens in pleno Com. Ceſtriæ coram Radulpho de Mainwaring tunc Juſticiario Ceſtriæ & Baronibus, &c. quiet. clam. Richardo de Kingeſleigh totam villam de Bertherton unde dotata fuit.

And whereas you pretend page 4 and 5. of your Anſwer, (which is the onely example which you bring to prove what you there alledge) that *Geffrey de Dutton*, who made the Original Deed of *Nether Tabley* had this [6]word *Domino* ſometimes prefixed to his Name, when he was a Witneſs, and yet was no Knight; and thence would inferre, that the word *Dominus* is no ſure rule, to be always underſtood of a Knight. I ſhall before I give an anſwer unto what you ſay, tranſcribe the ſaid Deed out of your *Hiſtorical Antiquities*, as I find it in the 355 page of your ſaid Book. [Page 6.]

Sciant præſcntes & futuri, quod ego Galfridus de Dutton dedi & conceſſi & hac præſenti Charta mea confirmavi Margaretæ filiæ meæ, pro homagio & ſervitio ſuo totam villam meam, quæ vocatur Parva-Tabley, ſine ullo retenemento, cum Homagiis & Servitiis, cum Villenagiis, cum Boſcis, cum Planis, cum Pratis, & Paſcuis, cum Moris & Mariſcis, cum Aquis & Molendinis, cum Viis & Semitis, cum omnibus locis prædictæ Villæ pertinentibus: Tenendam & habendam ſibi Margaretæ, & Hæredibus ſuis, de me Galfrido, & Hæredibus meis, liberè quiete, & pacificè, cum omnibus libertatibus, & Ayſiamentis prædictæ villæ pertinentibus: Faciendo inde mihi forinſecum ſervitium, quantum pertinet ad

[Page 7.] *[7]duas Bovatas terræ, unde triginta Bovatæ Terræ faciunt Feodum unius Militis, & faciendo ſervitium de* Hauthoner *quantum pertinet ad prædictam villam, pro omni ſeculari ſervitio, conſuetudine & demanda, mihi & Hæredibus meis pertinente. Et ego Galfridus & Hæredes mei prædictam villam, ut prædictum eſt, prædictæ Margaretæ & hæred. ſuis, contra omnes homines & feminas in perpetuum warrantizabimus. Et ad majorem hujus rei ſecuritatem huic præſenti ſcripto Sigillum appoſui meum. Hiis Teſtibus, Domino Thoma de Dutton, Domino Galfrido de Dutton, Hugone de Lymme, Thoma fratre ejus, Ricardo de Aſton, Rogero de Toft, Willielmo de Waleton, & multis aliis.*

Now this *Geffrey de Dutton*, being that perſon who did give *Little-Tabley*, (now called *Nether-Tabley*, and the principal Seat of your Family) unto *Margaret* his Daughter and Heir, who firſt was married to *Robert de Denbigh*, and afterwards to Sir *Nicholas Leiceſter*, and ſo brought *Nether-Tabley* unto the *Leiceſters;* A Man would think that you ſhould be very well acquainted with all the Deeds that the ſaid *Geffrey* made, which are in your

[Page 8.] cuſtody, and [8]yet I doubt not but to make it appear, that you have run into ſeveral very groſs errors, concerning that *Geffrey de Dutton*, who made the ſaid Deed; For firſt, page 4 and 5. of your Anſwer, you tell us (which is but your own fancy) that the word *Dominus was applied to the better ſort of Gentlemen in thoſe ages who were no Knights, and that in thoſe elder Ages it was*

ſometimes prefixed, and oftner omitted even to the ſame Men; as Domino Galfrido de Dutton, who in the Original Chart of Nether-Tabley *writes himſelf only — Ego* Galfridus de Dutton *dedi, &c. and ſeveral other Deeds you have ſeen of the ſame perſon (who you ſay was lineal Anceſtor to* Warburton *of* Arley*) wherein you dare affirm among the Witneſſes ſubſcribed, he hath five times and more the word* Dominus *omitted, for once that we find it prefixed to his name; and you are very confident, was not in him, as many others alſo, to be conſtrued any more then Maſter* Geffrey Dutton, *and that he was no Knight;*

To anſwer which, I ſhall thus far agree with you, That I believe the ſaid [9]*Geffrey Dutton* (Son of *Geffrey*, Son of *Adam*) who made the ſaid Deed of *Little or Nether Tabley* was no Knight, But I cannot imagine how it is poſſible that the ſaid *Geffrey de Dutton* to that or any other Deeds of his own, could have his Name either with the word *domino*, or without, either five times for once, or at all, amongſt the witneſſes ſubſcribed, unleſs you fancy, that he was a Witneſs to his own Deeds, which is as groſs a thing as I have known; But beſides this, you run into another errour, and when you do indeed find the word *dominus* prefixed to the name of *Geffrey de Dutton* as a Witneſs to other Mens Deeds, you will needs have that *Dominus Galfridus de Dutton* to be him, who made the ſaid Deed of *Nether Tabley*, whereas it was not he, but his Father, as I ſhall preſently make very manifeſt; For it is clear that you have ſeen no deed made by any *Geffrey de Dutton*, in which the word *dominus* is uſed by the party himſelf, becauſe, you tell us *p.* 5 *&* 6. (but erroneouſly alſo, as will anon appear) that the word *dominus* is never uſed in old Deeds by the party himſelf, [10]but where it is joyned with another word, as *Ego Willielmus Manwaring Dominus de Pever, Ego Robertus dominus Moaldiæ;* and alſo *p.* 5. you onely ſpeak of his Name being ſubſcribed as a Witneſs, ſo that all the Proof which you have of a *Dominus Galfridus de Dutton* is from his being called ſo by other perſons in other Mens Deeds:

[Page 9.]

[Page 10.]

Now, it appearing in your *Hiſtorical Antiquities*, *page* 250. that *Hugh de Dutton*, Son of *Hugh*, Son of *Hodard*, had a ſecond Son named *Adam de Dutton*, (from whom you ſay the *Warburtons* of *Arley* are deſcended) and the ſaid *Adam de Dutton* as appears in your ſaid Book, *page* 384. having iſſue a Son owned by you to be Sir *Geffrey Dutton*, which Sir *Geffrey*, as you confeſs, *page* 354 & 355. had iſſue *Geffrey Dutton*, who made the ſaid Deed of *Tabley*, the ſaid Sir *Geffrey Dutton* the Father being then living, and a Witneſs to the ſaid Deed, you when you find a *Dominus Galfridus de Dutton* to be a Witneſs to any Deed, will not own it (as you ought to do) to be Sir *Geffrey Dutton* Son of *Adam*, who indeed was a Knight, but you will
[Page 11.] have it to be *Geffrey Dutton* [11]the Grandſon of *Adam*, who was no Knight; But though perhaps you may by ſuch deviſes as theſe, impoſe upon ſome ſilly Readers, yet certainly no intelligent perſon will believe what you ſay concerning the ſame.

Alſo, I might here ask you, whether the word *Dominus* when it is prefixed to the name of a perſon, who is not a Clergyman, doth prove him certainly to be a Knight, or not? If it do, Why will not you call every Layman a Knight, that hath it ſo prefixed? and if it do not, Why do you in your *Hiſtorical Antiquities p.* 330 & 332. own Sir *Thomas Mainwaring* of *Warmincham*, upon the like proof, to be a Knight? And Why (as appears in the 8 *Page* of your *Anſwer* to my *Defence* of *Amicia*) *did you fully intend to have called* Ralph Mainwaring, Roger Mainwaring *and* William Mainwaring, *all Knights, but that you know not by what fate it was forgotten?* And, Why do you all along in your later Book acknowledge them to be Knights?

And whereas you ſay, *p.* 5 *&* 6. that, *the word* Dominus *is never uſed in old Deeds, by the party himſelf, but when it is*
[Page 12.] [12]*joyned with another word, as* Ego Willielmus Mainwaring Dominus de Pever, Ego Robertus Dominus Moaldiæ, *but is only uſed when the party is ſubſcribed as a witneſs;* Though that be true for the moſt part, yet it doth not alwayes hold, as will appear by two Deeds of Sir *Thomas Mainwarings* of *War-*

mincham, which I have by me, ſealed with two Barres in Green-wax, written about thus, *S. Tome le Maynwarig;* which Deeds you have ſeen, and are as followeth;

Sciant præſentes & futuri quod ego Dominus Thomas *de Menylgaring dedi conceſſi & hac præſenti carta mea confirmavi Hamoni filio* Johannis *de* Bruerio *pro homagio & ſervitio ſuo quinque acras terræ in Villa de Cogiſhull, illas, ſcilicet, quas de me prius tenuit ad terminum, cum aumento perficiendi quinque acras integras ſine impedimento, & ſicut ſepe foſſato metis & bundis circueuntur & continentur, & cum omnibus aliis pertinentiis ſuis, & pro tribus marcis & dimid. argenti, quas mihi dedit præmanibus: Habendum & tenendum de dicto* **Domino Thoma** *& hæredibus ſuis, dicto Hamoni & hæredibus ſuis & aſſig-*[13] *natis, libere, quiete, integre,* [Page 13.] *hæreditarie, imperpetuum, in boſco, in plano, in pratis, in paſcuis, in viis, in ſemitis, in aquis, in moris, in omnibus communibus, & aſyamentis Villæ de Cokiſhull ubique pertinentibus: Reddendo inde annuatim dicto* **Domino Thome** *& hæredibus ſuis duos ſolidos & ſex denarios ad duos anni terminos, videlicet, ad Nativitatem Sancti* Johannis Baptiſtæ *quindecem denarios, & ad feſtum Sancti* Martini *in yeme quindecem denarios pro omni ſervitio ſeculari, exactione & demanda mihi & hæredibus meis pertinentibus: Et ego vero dictus* **Dominus Thomas** *& hæredes mei dicto Hamoni & hæredibus ſuis & aſſignatis totas prædictas quinque acras terræ cum omnibus pertinentiis ſuis ſicut prænotatum eſt contra omnes homines & fœminas warantizabimus & defendemus imperpetuum. In hujus rei teſtimonium huic præſenti cartæ ſigillum meum appoſui, Hiis Teſtibus,* Hugone *de* Duram, Willielmo Bernard *tunc Seneſchallo domini* Thomæ *de* Menylgaring, Richardo Starkye, Roberto *de* Wynninton, Ranulpho *de* Berthorton, Thoma *de* Queloc, Johanne *de* Merbury, Rogero *clerico, & aliis.*

[14] *Sciant præſentes & futuri quod ego Dominus* Thomas *de* [Page 14.] Menylgaring *dedi conceſſi & hac præſenti carta mea confirmavi* Roberto *de* Bexeckne *pro homagio & ſervitio totam illam terram quam mercatus fuit de* Hugone *de* Berdeney *ſicut ſepe & foſſato*

circuitur & includitur & metis & bundis continetur cum omnibus pertinentiis ſuis: Habendum & tenendum de me & hæredibus meis & aſſignatis dicto Roberto *& hæredibus ſuis & aſſignatis, libere, quiete, integre, hæreditarie, in pace, bene, in boſco, in plano, in aquis, in viis, in ſemitis, in pratis, in paſturis, cum housbold & haybold, & tacfre, de omnibus propriis porcis ſuis infra omnes metas de Cokiſhull, & cum omnibus aliis communibus & eſyamentis prædictæ villæ ſpectantibus: Reddendo inde annuatim mihi & hæredibus meis & meis aſſignatis quindecem denarios argenti ad duos anni terminos, videlicet ad nativitatem ſancti* Johannis Baptiſtæ *ſeptem denarios & obolum & ad feſtum ſancti Martini in yeme ſeptem denarios & obolum pro omnibus ſervitiis ſecularibus exactionibus & demandis prædictæ terræ per-*[15] *tinentibus:*

[Page 15.]

Et ego vero **Dominus Thomas** *de Menilgaring & hæredes mei & aſſignati mei dicto Roberto & hæredibus ſuis & aſſignatis totam prædictam terram ſicut ſepe & foſſato circuitur & includitur, & ſicut prænotatum eſt contra omnes homines & fæminas imperpetuum warrantizabimus & defendemus: Pro hac autem donatione conceſſione & cartæ meæ confirmatione dedit mihi dictus Robertus quatuor ſolidos argenti præmanibus: In cujus rei teſtimonium huic præſenti cartæ ſigillum meum appoſui: Hiis teſtibus, Richardo Starkey, Willielmo Bernard tunc Seneſchallo Domini Thomæ de Menilgaring, Johanne de Merbury, Hugone de eadem, Hugone filio Hamonis de Comberbach, Ad. de Acton, Roberto de Burwys, Rogero Clerico, & aliis.*

And as to what you ſay, page 8. of your *Anſwer, that as the word* Sir, *is in common diſcourſe applicable to perſons of quality from the higheſt to the loweſt in its larger notion, ſo* Dominus *is applicable to any Knight or Gentleman, as if you ſhould ſay, Domine quæſo, num hoc verum eſt quod dico, necne?*

[Page 16.]

[16] I grant it to be true, but then as you obſerve, the word *Sir,* or the word *Dominus* muſt onely ſo be taken in its *larger notion,* but that is ſo far from weakening what I ſay, that it doth con-

firm it; For though if I ſpeak to one whoſe name is *Peter*, that is but a Gentleman, I may properly uſe the word *Sir* to him, yet I cannot properly joyn the word *Sir* to his name, and call him *Sir Peter*, unleſs the ſaid perſon be either a Baronet or a Knight, and this is the caſe in theſe old Deeds, where the word *Dominus* is prefixed to the names of the ſaid Knights.

Alſo, if the word *Dominus* do only ſignify *Maſter*, (as you would have it) What is the reaſon, that in ſome Deeds it is only put before the names of ſome of the witneſſes, and not before the names of others? although thoſe other perſons to whoſe names it is not put, many times are Lords of ſeveral Manors, and perſons of very great Eſtate.

As to what you alledge, page 6. of your *Anſwer to my defence of* Amicia, [17]that in the 27 page of my ſaid *Defence*, Radulfus *de* Meidnilwaring *after his Daughter* Bertrey *was marriageable is there named without his Title of* Dominus; You your ſelf have anſwered that a little before, by confeſſing (though the word *Domino* is uſually ſet to the name of ſuch a perſon when he is named a witneſs) that the word *Dominus* is never uſed by the party himſelf, but where it is joyned with another word, as *Ego Willielmus Mainwaring Dominus de Peover, Ego Rogerus Dominus Moaldiæ*, which though for the moſt part it be very true, yet I have ſhewed that it doth not ever hold; But inſtead of obſerving that you had given a full anſwer to this objection of your own, you ſtrangely fancy, that I would poſſibly ſay, that that Deed was made before the ſaid *Ralph* was Juſtice of *Cheſter;* whereas in the 74 page of my ſaid Book, I had told you, that the ſaid Deed was ſo far from being made before the ſaid *Ralph* was Juſtice of *Cheſter*, that it was made after he had parted with the ſaid Office; And thus you became guilty of a double levity, firſt, in making an objecti-[18]on, which you your ſelf had anſwered but in the preceding page, and then in framing an anſwer thereto for me, directly contrary to what I had formerly ſaid.

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[Page 18.]

And whereas you ſay, page 8. that *you had rather give to any, eſpecially to my Family, more then is due, then leſs;* I could wiſh I had juſt cauſe to be of that opinion; For I am ſure you have omitted in our Deſcent, not only *Ranulfus*, who is nominated in *Doomesday Book*, but alſo *Richard Meſnilwaren* mentioned in your *Hiſtorical Antiquities*, page 111. *Roger de Menilgarin*, and * *William* and *Randle* his Sons, ſpoken of by you page 341. *Roger de Menilgarin* or *Mainwaring*, named by you page 362. Sir *Ralph Mainwaring* and Sir *Roger Mainwaring* his Son, both taken notice of by you pa. 330. and this upon a pretence, that they were Lords of *Warmincham*, whereas I am confident you will not deny but that the *Mainwarings* of *Warmincham* were alſo [19]owners of *Over-Peover* or the moſt part thereof, until Sir *Roger Mainwaring* gave *Peover* to his younger Son Sir *William Mainwaring*, and it was not long after, that the *Mainwarings* of *Peover* became Heirs male to thoſe *Mainwarings* of *Warmincham*, Sir *Warine Mainwaring*, Son of Sir *Thomas*, Son of the ſaid Sir *Roger*, dying without iſſue Male; Alſo I am ſure you denyed to do us right in one other particular, when you did it in the like caſe for another Family, which had not ſo clear proof for it as mine had.

* Note. *That page.* 117. *of your* Hiſtorical Antiquities, *you have placed* Randle *before* William, *contrary to what you have done Pa.* 341. *and contrary to* Monaſticon Anglicanum. Par. 1. Pa. 985.

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As for your new quarrel, (page 9 of your Anſwer) with the Herald, for giving to Sir *Randle Mainwaring* my great Grandfather ſix *Barrulets*, as his moſt proper Coat, whereas you ſay, *ever ſince the time of* Sir *Roger Mainwaring, aſwell the Heirs of the right Line, as alſo the* Mainwarings *of* Peover *(after they became next Heirs Male) have conſtantly born the two barres, for ſome hundreds of years;* I might reply and tell you, that the *Mainwarings*, of *Peover* have not conſtantly given, *Argent*, two *Barres Gules*, ſince they became Heirs Male to the *Mainwarings* of *Warmin-*[20]*cham*, as appears by my Deeds; Neither do I think that Mr. *Cambden* did look upon the *Six Barrulets*, as a Coat

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moſt peculiar to us; for, in his *Britannia* in his Deſcription of the County of *Cheſter*, he names the *two Barres* as the Coat moſt proper to our Family, as appears by theſe words of his, when he writes of *Aſtbury Church, viz. Hæc enim perpulchra eſt, cujus porticus Occidentalis ipſam Eccleſiam, quæ ſane alta, ſua altitudine adæquat, & pyramidem adjunctam habet. In cæmeterio duæ jacent ſepulchrales Militum effigies, in quorum ſcutis ſunt duæ directæ areolæ ſive Barræ. Verum cum coloribus ſuis deſtituantur non facile quis dixerit fuerintne ex* Breretonis, *Mainwaringis, vel de* Venables, *quæ clariſsimæ ſunt in vicinia familiæ, & ejuſmodi* Barras *variantibus coloribus gentilitiis in clypeis geſtant.*

I rather think that my Great Grandfather having a Fancy to that Coat of *Six Barrulets* more than to that of the *two Barres*, becauſe the moſt antient of our Deeds were ſealed therewith, that Mr. *Cambden* gave him liberty to bear either the one or the other, which I [21] ſee not but it might be done, being our Family had for [Page 21.] ſeveral generations uſually born the one, and the other had been born by our Anceſtor, and had never been uſed by any other Family, and I am ſure, though you be ſo captious with us, that you your ſelf have of late years given a different Creſt, from what had for a long time been born by your Predeceſſors, becauſe you found a more antient Creſt in ſome of your Seals: And whereas you inſtance *in the great Suit betwixt* Scroop *and* Groſvenour *in the Marſhals Court, under* Richard *the* II. *concerning the bearing of a Coat of Arms, whereto both challenged a right and propriety by uſage, but no other way;* You thence rightly infer, that uſage makes a right in ſuch caſes; but when you ſay, that *uſage only makes a right;* you are miſtaken therein, For (not to mention the caſe in hand, where a mans Anceſtor hath born a Coat, which for ſometime hath been laid aſide, but never taken up by any other Family) a Man could then have no right to a Coat, which was given him by a King of Arms.

[22] I am ſtill of opinion, that you have branded ſeveral perſons [Page 22.]

in your Book with Baſtardy, without any proof thereof, but ſhall not yet concern my ſelf for any (beſides my own Anceſtor) except ſuch as you give me juſt occaſion to take notice of; And as for *Geva* and *Richard Bacun's* Mother, the firſt of them is not yet by you proved to be a Baſtard, and I ſhall certainly hereafter make it appear, that the ſecond was no Daughter of *Hugh Cyveliok*, ſo that *Amicia* is like to receive no *blow* at all; And if they were both Baſtards, it would be no prejudice to *Amicia*, becauſe I have in my former Book fully proved, that the gift to *Geva* was not a Gift in *Free-Marriage*, (as that to *Amicia* was) and you do not pretend at all, that any ſuch gift was made to the Mother of *Richard Bacun*.

And whereas you tell me *you believe that* Geva *and the wife of* Bacun *had never been ſpoken of, nor ſuſpected, nor doubted of by me, had not the caſe of* Amicia *been concerned;* I can aſſure you
[Page 23.] [23]I ſhould have been of the ſame opinion concerning them, if you had never mentioned *Amicia;* but if you had not pretended from their Caſes, to raiſe ſome Arguments againſt the ſaid *Amicia*, I ſhould never have troubled my ſelf about them, and therefore I forbear to tell you of all miſtakes, except ſuch as the caſe in hand doth give me juſt occaſion to obſerve. And whereas you ſay, page 12. that *you think you ſhall make good what you have alledged, with as much certainty as the nature of the thing and times will admit.* And alſo page 27. that *Geva* was *certainly a Baſtard, by as good proof as can poſſibly be expected in ſuch a caſe;* You do thereby implicitely confeſs, that you do not make thoſe things appear with any certainty at all.

I have now done with what you have ſaid concerning my *Epiſtle*, and ſhall now proceed to conſider of your *Anſwer* to the Book it ſelf; and becauſe you do in ſeveral places, again ſay, what you have ſaid heretofore, I hope the Reader will excuſe
[Page 24.] me, if I be conſtrained ſometimes to repeat the ſame [24]things, which I alſo have formerly ſaid.

In the 14 and 15 pages, you do tell me that I ſaid I would remind you of that which you had formerly been told, *viz.* Who thoſe *Heralds* were that gave to *Mainwaring* of *Peover* the quartering of the Earl of *Cheſter*'s Coat, in Queen *Eliſabeth's* time, and withal do ſay, that *I never told you, till long time after that part of your Book was written*, which, perhaps may be true, becauſe that part of your Book was written very long ſince, *viz.* in the year 1647. but I am ſure I have often told you of them, and you have alſo often ſeen the *Pedigree* it ſelf, under the hands of Mr. *Cambden*, and Mr. *Sampſon Erdeſwick;* the reſt in that place is only the repeating of your former quarrel with them, for ſuffering us to quarter the Earl of *Cheſter*'s Coat, but if we can really prove, that we are of the Half Blood, whatever you conceive of it, I ſuppoſe all indifferent perſons will think it but meet, that we ſhould have the like liberty that all others have in the like caſe, in theſe last ages of ours.

[Page 25.] 25 What you ſay in the 16 and 17 pages, hath been ſome of it formerly ſaid in your *Hiſtorical Antiquities*, and alſo in the 15 page of this your *Anſwer*, and there is nothing there that is new, but that you only alledge, that *as to my note of Dukes and Earls to have been antiently Judges of* Cheſter, *I ſhould have diſtinguiſhed the times, for that was not till the Reign of* Richard *the* II. *(who made Deputies to act in their ſtead) before which time there were no ſuch great perſons Judges there, nor from* Henry *the Sevenths time downwards;* But what neceſſity there was for me particularly to diſtinguiſh the times in which thoſe great Dukes and Earls were Judges of *Cheſter*, I do not know; For I only inſtanced in that to ſhew, that the place of *Judge of Cheſter* was antiently a place of great repute, and though it was ſome time after the death of *John Scot*, before any ſuch great perſons were made Judges of *Cheſter*, by the Kings of *England*, and that in all the times of the Earls of *Cheſter*, before that Earldom was united to the Crown, there could not be any Dukes or Earls made [Page 26.] 26 Judges there, becauſe there were no ſuch perſons belonging to the then Earls (except *John Lacy* Conſtable of

Cheſter, who was not made Earl of *Lincoln*, as appears in your *Hiſtorical Antiquities* page 270. till the 23 of *November* 1232. which was but four years and upwards before the death of *John Scot* the laſt of the ſaid Earls) yet there were ever antiently perſons of good quality that were Judges of *Cheſter*, and if it had not been always a place of great repute, the Kings of *England* would never have made ſuch very great perſons to have ſucceeded them therein.

As to what you alledge in the 18, 19, 20, and 21 pages of your *Anſwer*, I do not doubt (though you affirm it can never be proved) but that I have already in my former Book, given moſt perſons ſatisfaction, that *Amicia* was of the Half-Blood to Earl *Randle*, by a former wife of Earl *Hugh;* And whereas you object, that it is more rational to imagine, that *Earl* Hugh *matching his only Daughter, which he had by a former Wife, would have married her to as conſiderable a perſon as was either*

[Page 27.] *pro-*[27] *vided by himſelf, or his Son for his younger Children by a ſecond venter;* I do anſwer and ſay, That I am not certain whether *Amicia* was the only Daughter that Earl *Hugh* had by his former Wife; becauſe, I know ſome that pretend they can tell of ſome other Daughter or Daughters which the ſaid Earl *Hugh* had by his ſaid Wife; but I do confeſs, I have never ſeen juſt proof of any but her; but ſuppoſing her to be the only Child by his firſt Wife; I have in my former Book, pa. 23, 24, and 25. ſhewed that there is no ſtrength in this Argument of yours; And I may here further add, that if you will ſearch for examples, you may find very many, where the elder Siſters, ſometimes, becauſe ſwayed by their affections, and ſometimes for other reaſons, have not been married to ſo great perſons as the younger Siſters have been; neither can you tell what portions Earl *Hugh* gave to *Amicia*, or to any of his other Daughters: neither is there any neceſſity that the elder Siſter, becauſe by a former wife, muſt have as great a portion as a

[Page 28.] younger Siſter by a [28]latter Wife; becauſe, many times perſons are not able to give ſo great portions in their younger days, as

afterwards: and becauſe, the Children of the living Wife are oftentimes better provided for, than thoſe of the dead Wife; and of this, I could if I pleaſed, inſtance in ſome that I know; and in caſe the Father dye, and leave onely iſſue Female by a firſt, and a Son and iſſue Female by a latter wife (as in this caſe) there is great likelihood (beſides the advantage that the Siſters by the latter wife would have by being Heirs at Law to their Brother, he dying without iſſue) that the Brother will naturally be more kind to thoſe Siſters that are of the Whole-Blood, and about the ſame age, and bred up with him, than he will be to her that is but his Half-Siſter, and much older then himſelf.

And whereas you ſay, pa. 18, and 19. that *the expectation of Earl* Randle Blundevile's *Siſters of the Whole Blood (which I conceive added to their fortunes, whereby they matched to ſo great perſons) could not be much, being grounded upon great* [29]*uncertainties, ſince it could not be foreſeen (when they married) that their Brother ſhould dye without iſſue, who afterwards married two wives ſucceſſively, purpoſely to have iſſue of his own Body, to inherit his own Lands;* I do think if you conſider it, you cannot in good earneſt believe, that the ſaid Earl *Randle Blundevil*'s four Siſters were married before the ſaid Earl married his firſt wife, whatever they were when he married his ſecond wife; For, *Bertred* the Mother of *Randle Blundevil* being aged but twenty four years when her Husband Earl *Hugh* died, as appears, *Rot. de Dominabus pueris, &c. in Scacc. penes remem. R. ſub Tit. Linc. Rot.* 1. and the ſaid *Randle,* as appears in your *Hiſtorical Antiquities,* page 146. being married to *Conſtance* the Widow of *Geffrey,* fourth Son of King *Henry* the II. and Daughter and Heir of *Conan* Duke of little *Brittain,* and Earl of *Richmond,* in the year 1187. at which time the ſaid *Bertred* was but about Thirty years old; Can any one think that all the five Children of the ſaid *Bertred* were then married? [Page 29.]

[30]And whereas you ſay, that it was I who informed you of [Page 30.]

the three eminent Judges, and four Heralds that were of opinion, that *Amicia* was Legitimate: If your meaning be, that I was the only perſon who informed you thereof, I muſt impute it to the weakneſs of your memory, which fails you in this particular; For, you had many times ſeen our *Pedigree*, atteſted by Mr. *Cambden* and Mr. *Sampſon Erdeſwick*, who did allow her to be a *Legitimate* Daughter, and ſeveral years ſince, two other Heralds, who are yet living, at *Cheſter* did declare to you in my hearing, that ſhe could not be a Baſtard, and the one of them then named to you a *Chief Juſtice* of the *Common Pleas*, and a *Lord Keeper* of the Great Seal of *England* (both now deceaſed) who did concur with them therein, and you have alſo ſeen an opinion of a Judge under his Hand, together, with Reaſons for the ſame; and though you ſpeak ſo ſlightly of the opinions of Judges and Heralds, *in comparing them to Hands got to a Petition*
[Page 31.] *or Certificate, and pretend it was without hear-*[31] *ing the Reaſons on the other ſide;* I very well know (though it ſeems you have forgotten it) that that hand which was obtained, was procured, becauſe you ſeemed to deſire to know his opinion in the caſe; And I alſo know that thoſe two Heralds, who at *Cheſter* did declare their judgements againſt you, did then hear all the reaſons that you could then alledge.

As to what you ſay, pa. 22, 23, 24, 25, 26, and part of the 27, in all which you would willingly prove, that the Common-Law is now altered ſome other way than by Statute, you do but loſe your labor, and can never prove the ſame; For, in that *Maxime* of the Law, where it is ſaid, That *whatſoever was at the Common-Law, and is not ouſted or taken away by any Statute, remaineth ſtill;* the words *ouſted* or *taken away*, muſt needs be taken conjunctively, and muſt neceſſarily bear this ſence, *that the Common-Law ſtill is the ſame in all points, as it was before, except where taken away by Statute;* and if thoſe words ſhould be taken
[Page 32.] otherwiſe, then, the meaning [32]would be this, *that that part of the Common-Law which doth remain, doth remain*, which would

be a very ſtrange *Maxime;* And whereas you heretofore urged ſome places, to prove, that the Common-Law is alter'd at this day from what it was in former ages, long after the time of King *Henry* the II. which you now alſo urge again in the 24 page of your latter Book; I muſt give you the ſame anſwer which I formerly did, *viz.* That thoſe places do not prove that the Common-Law at this day doth vary from what it was in former ages, in any particular, but onely that it was taken to be otherways in thoſe days, and that it was but juſt like ſome Caſes in our *Reports*, which have at ſeveral times been adjudged directly contrary to each other; but notwithſtanding that, the Common-Law was ſtill the ſame; And that I might come as near you as I could; I did then acknowledge that though the Common-Law was ever the ſame, where not alter'd by Parliament: yet in former ages, they did in ſome particulars, take the Law to be otherways than they now do; And I did alſo ac-[33]knowledge, that if you could [Page 33.] prove, that they had done ſo formerly in this caſe of *Frank-Marriage*, that it would have taken off much of the ſtrength of my Argument from the words *in libero Maritagio*, becauſe, that antient Deeds and Grants (according to what my Lord *Coke* on *Littleton* ſays, fol. 8. b. at the bottom) are to be expounded as the Law was taken to be at the time of the Grant: Now theſe places which you alledge, do not prove a change of the Common-Law, in any particular, other than by Statute, but only that the Law was ſometimes differently taken in one Age, from what it was in another Age; for in your 24 page, where you cite *Coke upon Littleton, fol.* 34. *Sect.* 39. you do not there ſay, that my Lord *Coke*'s words were, That the Law was different in *Glanvile*'s time in the particular you there mention, from what it is now; but you ſay, that he ſaith that in antient times, as it appears by *Glanvile, lib.* 6. *cap.* 1. *it was taken* (that is, the Law was taken) *that a Man could not have endowed his Wife, ad Oſtium Eccleſiæ, of more than a third part, but of leſs* [34]*he might: but at this day the Law is taken,* (as *Littleton* holdeth, *which is*) *That a Man may Endow his Wife* ad Oſtium Eccleſiæ *of his whole Land, or* [Page 34.]

of the half, or other leſs part, which is the very ſame thing that I ſaid; And where you again cite *Coke* upon *Littleton,* fol. 8. a. towards the bottom, you bring him in, ſaying, that *of antient time the Heir was permitted to have an action of Debt upon a Bond made to his Anceſtor and his Heir, but the Law is not ſo at this day;* but my Lord *Coke* doth not ſay as you do, *viz.* That the Law is not ſo at this day, but that the Law is not ſo *holden* at this day; ſo that he ſtill avoids the expreſſion of *the Law being changed,* (otherways than by Statute) although it was differently holden in ſeveral Ages; And thus, as you may ſee *Coke* upon *Littleton,* fol. 21. b. in the Caſe of *Piers de Saltmarſh* and others, it was judged in King *Edward* the Thirds time, and in King *Edward* the Fourths time, That a Man might give Land to his Son in Frankmarriage, but in King *Henry* the Eighths time, it was holden otherways, the former Books being not remembred; But [Page 35.] [35]notwithſtanding, that this point was judged thus differently, the Law was ſtill the ſame, and all that can be ſaid, is, that ſome of the Judges did not judge right, according to the Common-Law; and indeed if this Rule of yours was true, that becauſe the Judges in one Age did take the Common-Law to be otherways, than it was taken in former Ages, that therefore the Common-Law was changed: The Judges then could never do contrary to the Common-Law, For, when they had declared (though erroneouſly) that the Common-Law ought to be otherways taken, than it was formerly, the Common-Law by your Rule, would be thereupon changed, and what they did, would ever be legal, The abſurdity whereof every one may eaſily diſcern.

What you ſay page 27, 28, 29, 30, and 31. to all thoſe Reaſons which I did give, to ſhew that whenſoever the word *Mulier* is uſed in the caſe of Frankmarriage, it ſhall by common-intendment be underſtood of a Woman that is of the *Kindred,* will, [Page 36.] (I believe) [36]give no knowing perſon any ſatisfaction at all; for though you pretend your ſelf to be very pleaſant, when you ſay

you have ſeldom known (nor you believe any other) any ſuch queſtion as this, Whether Hugh Cyveliok *had a former Wife, to be proved by argument of Scripture, or nicety of Law, which is meerly a queſtion of Hiſtory*, yet certainly the underſtanding Reader, will eaſily perceive that this is but a ſhift, and will alſo diſcern, that I did not bring that place of Scripture to prove that *Hugh Cyveliok* had a former wife, but that I made uſe of it by way of *anſwer*, to take off what you had alledged, and I do not at all doubt, but that Text will fully ſatisfy, that all expreſſions which ſeem Univerſal, are not always to be expounded without any limitation at all; but as you would extend that expreſſion of *Glanvill* too far, ſo you run to the other extream concerning this of *Deuteronomy* 14. 26. and would reſtrain theſe words, *or for whatſoever thy ſoul deſireth*, only to thoſe things there mentioned, *viz.* Oxen, Sheep, Wine, and ſtrong Drink, which would be a *Tautologie*, and ſeveral times [37]in the ſame verſe give them liberty to make uſe of Oxen, Sheep, Wine, or ſtrong Drink, whereas undoubtedly the Jews at their ſaid Feaſts had alſo liberty to eat the Goat, the Hart, Roebuck, Fallow Deer, Wild Goat, Pigarg, Wild Ox, the Chamois, as alſo all clean Fowls, Fiſhes, and other *clean* meats whatſoever, allowed them by their Law; and therefore this expreſſion being as univerſal as that of *Glanvill*, and yet being to be expounded, ſo as to agree with the Laws of that Kingdom, why ſhould not this ſeeming univerſal expreſſion of *Glanvill* be ſo expounded, as to agree with the Laws of our Kingdom? And if ſo, ſure what I ſay is to the point in hand.

[Page 37.]

Alſo, If this Text of Scripture ſhould be reſtrained as you would have it, it would not contradict, but confirm what I ſaid; For, what expreſſion can ſeem more univerſal than this, *viz. whatſoever thy ſoul deſireth*, and yet you confeſs it ought not to be underſtood without ſome limitation, and indeed, you reſtrain it *more* than I do.

[Page 38.] [38]And though it be true, that Baſtards both were and yet are capable of receiving Lands after they have gained a name by *reputation*, yet they are not capable of having Lands paſſed with them *in libero maritagio*, though it be paſſed with them by the name of Daughter, without the addition of Baſtard; and though you pretend that *Amicia* had gained a name by reputation, yet you do not, nor cannot tell what it is, for certainly *Amicia* and *Daughter* are not any reputed names.

Neither do I put any argument about *Glanvil*'s contradicting himſelf, as you put it, as will appear, pa. 34, and 35. of my former Book, ſo that you leave what I there ſay, wholly unanſwered. Neither do I ſay, that the Lawyers of latter ages do expound the Law, that Lands cannot paſs in Free-marriage with Baſtards now, *ergo*, it was ſo taken in *Glanvil*'s time; but I have given you many reaſons, why the Law was taken in the time of *Glanvill*, in the point of *Free-Marriage*, as it is taken now; to which you give no other anſwer, but that you will leave
[Page 39.] it to wiſe Men to judge, who will take the [39]paines to ſcan them, whether they be pertinent; And I do willingly appeal to all wiſe men, whether that be an Anſwer to thoſe Eight Reaſons, for if it be I am much miſtaken therein.

But what will you ſay, (though I did admit it to be ſo, becauſe I would put the Caſe as hard as I could upon my ſelf) if *Glanvil* by thoſe words of his, *Lib. 7. cap.* 1. *Quilibet liber homo quandam partem terræ ſuæ cum filia ſua, vel cum aliqua alia qualibet muliere dare poteſt in Maritagium, ſive habuerit hæredem, ſive non, velit hæres vel non, imo & eo contradicente* did not ſay or mean that a man might give lands in *Free-marriage* with any woman whatſoever, but only that he might give lands with any woman in that kind of Marriage, which was not free; For, if you obſerve him well, he doth not there ſay, that any man whatſoever can give Lands *in liberum maritagium* with any woman whatſoever, but only that it may be ſo given with any woman *in Maritagium;* Now that *Maritagium* is two-fold, *Glanvil* himſelf

tells you, *Lib. 7. cap.* 18. where he ſayes, *Maritagium autem,*
aliud nomi-[40]*natur liberum, aliud ſervitio obnoxium; liberum* [Page 40.]
dicitur Maritagium quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliqua muliere alicui in Maritagium ita quod ab omni ſervitio terra illa ſit quieta, & a ſe & hæredibus ſuis, verſus capitalem dominum acquietanda, & in hac quidem libertate, ita ſtabit terra illa uſque ad tertium hæredem nec interim tenebuntur hæredes inde facere aliquod homagium, poſt tertium vero hæredem, ad debitum ſervitium terra ipſa revertetur, & homagium inde capietur. Many of which words of *Glanvil* you may alſo find cited by my Lord *Coke* on *Littleton, fol.* 21. *b.* Now if you well obſerve it, *Glanvil* doth not there ſay that a man may give Lands *in liberum Maritagium cum qualibet muliere,* but only *in Maritagium;* But when he ſpeaks of *Free-marriage* he uſeth the expreſſion *cum aliqua muliere,* with *ſome woman,* viz. one of the *Kindred* ſo that without doubt he uſing the ſame expreſſion with Mr. *Bracton* who was the next Writer after him, he alſo underſtands it in the like manner, as the other did; But if Mr. *Glanvill*'s expreſſions (*Lib. 7. cap.* 1.) had concerned [41]*Free-* [Page 41.]
marriage, yet I have formerly ſhewed, that the word *Mulier* in that caſe, could only have been underſtood of a woman of the *Kindred:* Alſo my Lord *Coke* upon *Littleton, fol.* 21. *b.* when he hath told you that one of the four things incident to a Frank-marriage is, that the Woman or Man that is the cauſe of the Gift, be *of the blood* of the *Donour,* not long after on the Margent of the ſame Page quotes *Glanvil, lib. 7. cap.* 1. (the place on which you build) which he would never have done, if that place had been contradictory to his opinion, and certainly, if *Glanvills* words in that place are to be underſtood as you would have them, they do contradict what my Lord *Coke* there ſayes, unleſs the Law in that point was taken after one manner in *Glanvil*'s time, and after another manner in my Lord *Coke*'s time, which if it had been ſo, my Lord *Coke* had been concerned to have taken notice thereof, having no otherway to reconcile it with what he had ſaid.

What you ſay, *pag.* 32 & 33. is not at all to the purpoſe; For,
[Page 42.] you there tell us, that *Baſtard Sons, baſtard* [42]*Daughters, baſtard Brothers*, &c. *in all Settlements and Conveyances of theſe laſt antient Ages, are terned Baſtards, but* you ſay *that was never uſed in the Antient Ages;* But, this is only your bare ſaying without any proof at all, ſo that your word herein will not paſs, unleſs you had ſhewed us ſeveral antient Settlements and Conveyances, in which, baſtard Sons, baſtard Daughters, baſtard Brothers, *&c.* are named without the word *Baſtard* joyned to them, which I am confident you cannot do, unleſs when very great perſons are named, who by reaſon of their greatneſs, are uſually excepted in ſuch caſes as thoſe; And indeed you do not only want proof to make good what you here ſay, but I have formerly brought proof of the contrary, from Sir *Henry Spelman*, who in his *Gloſſary* on the word *Baſtardus*, ſayes, *Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non comprehenduntur baſtardi.* And as to what you affirm, that *Baſtards be of the blood both now and in former ages, though the Law will not allow them ſo, becauſe they now are eſteemed in the eye of the*
[Page 43.] *Law quaſi* [43]*nullius filius; For if* A. *have a Baſtard Son or Daughter, which is really his, they muſt needs be of his blood: for no Law can extinguiſh Nature; though by common Law they are not now eſteemed ſo;* There is no force in what you ſo ſay, Becauſe, in this caſe Children are looked at, as they are in Law, and not as they are really, becauſe, it cannot be known what they are really; And therefore if *A.* have a baſtard child which is really his, yet it ſhall not inherit, becauſe it is in Law *nullius filius;* and on the other ſide, If *A.* have a Wife who doth play falſe with him, and hath a Child begotten of her body by another man, yet this Child ſhall inherit, becauſe it is in Law the Child of *A.* And whereas you alſo ask the Queſtion, What if you ſay that *the reaſon why in the Deeds of thoſe elder Ages, they were called Daughters, without any addition of Baſtard, whereby the party owned them to be of their blood, was, that the Lands paſſed* in libero maritagio *with ſuch might deſcend to their heires? For*

our Lawyers now tell us, that Baſtards are capable of receiving Lands, after they have gained a Name by reputa-[44]*tion; Why may not then Baſtards, having gained the names of Daughters, receive a grant from their owned Fathers, either in Frank-marriage or otherwayes?* [Page 44.]

Your Queſtion will be eaſily anſwered, becauſe the conſideration of the Gift in *Free-marriage* is the blood that is betwixt the *Donour*, and that *Donee* with whom the Land is given; But a Baſtard is not *de ſanguine patris (Dyer, Fol.* 374. *b.)* and the calling of any perſon *Daughter*, who is not ſo in Law, will not make her of the blood, for if that would ſerve, a Man might call any other Woman his Daughter, that is not ſo, and then give Lands with her in *Frank-marriage:* Beſides, to what purpoſe ſhould ſuch tricks as theſe be uſed, which will not hold, when though a Man cannot give Lands in *Free-marriage* with his Baſtard Daughter, yet there are other wayes, whereby any Man that pleaſes and hath a diſpoſing power, may ſettle Lands on a Baſtard Daughter and her heires: Alſo, if *Glonvills* words did prove, as you would pretend they do, To what purpoſe ſhould men in thoſe [45]ages, leave the word *Baſtard* out of their Deeds of *Free-marriage* to their baſtard Daughters, with deſign thereby to cauſe ſuch lands to continue to them and their heirs, if ſuch gifts might be made with any woman whatſoever; ſo that you never obſerve how finely you have argued here, againſt your ſelf. [Page 45.]

Where you ſay, in the 34, 35, 36 and 37 *Pages* of your *Book*, that *though you do not find* Geva *called a Baſtard in expreſs terms, yet you find it implyed in an Author contemporary (*meaning *Ordericus) by certain and ſure conſequence, which you believe can never be fully anſwered;* and for the fortifying of which, you pretend to give ſome reaſons; Give me leave (ſince you give the occaſion) again to ſay, what I have formerly ſaid, *viz.* that though *Ordericus*, ſpeaking of *Hugh Lupus* his death, doth add

theſe words, *Richardus autem pulcherrimus puer quem ſolum ex* Ermentrude *filia* Hugonis *de* Claramonte *genuit.* I am not yet ſatisfied, but that he might as well mean, that he was the only
[Page 46.] Son which Earl *Hugh* [46]had by *Ermentrude,* as that he was the only child that he had by her; For there is no neceſſity to take the word *ſolum* adverbially, neither is it marked as an Adverb in *Ordericus* his Book, though it be ſo in yours, and yet in his Book, Adverbs are uſually marked; And though you alleadg that *Ordericus* doth not ſay *quem ſolum filium, as I interpret him, but indefinitly, quem ſolum ex* Ermentrude *genuit, and ſo, whether ſolum be underſtood adverbially, or whether it be taken for a Noun, no more can be made of it in Engliſh than thus,* Richard *a beautiful youth whom only Earl* Hugh *begot on* Ermentrude, *&c. and ſo, whether we Engliſh it, whom only he begot, or whom he only begot, it retains the ſame ſenſe, and ſhews that no other perſon, either Son or Daughter, was begotten on* Ermentrude *by Earl* Hugh. You muſt give me leave to diſſent from you herein; For, I conceive this expreſſion of *quem ſolum genuit,* doth amount to as much as if he had ſaid *quem ſolum filium genuit,* which if it do, then (notwithſtanding the ſaid expreſſion) Earl *Hugh*
[Page 47.] might poſſibly have a Daughter or Daughters by the ſaid [47]*Ermentrude;* For, to what Antecedent can the word *quem* ſo properly relate, as to the word *puer?* and if ſo, then *quem ſolum puerum* is as much as *quem ſolum filium,* and ſo doth not exclude him from having a Daughter or Daughters by the ſaid *Ermentrude;* For, though the word *puer* be by ſome underſtood to ſignifie a Child of either Sex, as you alſo ſeem to take it in your *Hiſtorical Antiquities, p.* 113 & 114. (But miſprinted 121 & 122.) Yet Mr. *Gouldman* in his Dictionary will tell you that it is a miſtake, where on the word *puer* he thus writes, *Nonnullis habetur communis generis, ſed male, ex Ovidiano illo Carmine, de Iphide puella in puerum mutata;*

Dona puer ſolvit quæ fæmina voverat Iphis.

And though you ſay, that *Geva could not be by any former Wife, becauſe Earl* Hugh *had never any other Wife;* Yet that is more than either you or I know, for, there were many things done in thoſe Ages which never came to our knowledges. And therefore I do not [48]take upon me to tell, whether *Geva* was by [Page 48.] a former Wife than *Ermentrude*, or whether ſhe was by *Ermentrude*, or whether ſhe was a Baſtard, But I ſay, ſhe might be any of the three, for any thing that you have yet proved, and ſo long as it is uncertain what ſhe was, you can bring no conſiderable Argument from her againſt *Amicia;* And if you could prove her a Baſtard, it would ſignifie nothing, becauſe the Deed made to her, is not a gift in *Frank-marriage* (as hath formerly and will hereafter appear.)

And whereas you ask, *p.* 36. *Being I expound the words of* Ordericus *to be, that Earl* Hugh *had no other Son, What advantage it is to my purpoſe, unleſs* Geva *was that Daughter, and was legitimate?* I anſwer, That poſſibly *Geva* might be that Daughter, or poſſibly *Geva* might be by a former Wife, and that Daughter which Earl *Hugh* had by *Ermentrude*, might die before Earl *Richard*, ſo that nothing of certainty can be gathered from ſuch Arguments as theſe.

As to what you ſay, *p.* 38, 39, 40 & 41. that *I am not to argue upon poſſibi-*[49]*lities, and becauſe it might poſſibly be ſo, to ſay, that* [Page 49.] *the Earldome of* Cheſter *was antiently entayled on the heires Males;* I Anſwer, That I do not poſitively aver any ſuch thing, But let the caſe be how it will, and whetherſoever *Geva* or *Randle de Meſchines* was the heir general to *Richard* Earl of *Cheſter*, it ſeems to me that the ſaid Earldome, did not come by deſcent, to the heir general, whoever that was; For, it clearly appears that *Geva* had it not, and *Randle de Meſchines* had it not by deſcent; For, if what *James York* in his *Union of Honour*, *p.* 105. ſayes, be true, *Randle de Meſchines* was made Earl by Grant of King *Henry* the Firſt; and *Ordericus p.* 876. tells us, that he reſtored to the ſaid King *Henry*, all the Land which he had by his Wife the Widow of *Roger* de *Romara*, for

the Earldom of *Cheſter;* which was more than was needful for him to do, if he had a good title thereto by deſcent.

And whereas you ask me, *Why may I think that the King (though he gave it to* Randle*) did not give the honour and lands*
[Page 50.] *unto him, as in whom was the great-*[50]*eſt right to have it?* and do ſay, that *to this I give no anſwer at all.* I may well tell you, that I could not give an Anſwer, until you did ask the Queſtion, and you never asked the Queſtion in your former Book; But the Anſwer which I ſhall now give to this Queſtion, is, That I ſuppoſe, Kings in ſuch caſes do that, which to them ſeems moſt juſt, but yet Kings in theſe caſes, as well as in others, are of different Judgments from one another very many times, and indeed the very ſame Princes will be ſometimes of one mind, and ſometimes of another mind, concerning the ſame thing; And thus we ſee, when *Randle Blundevile* Earl of *Cheſter* dyed, which was in the year 1232. King *Henry* the Third did ſuffer the four Siſters of the ſaid Earl *Randle,* who were of the whole blood, to inherit that eſtate, and the ſaid Earldome went to *John Scot* ſon of *David* Earl of *Huntingdon* in right of *Maud* his Mother, the eldeſt of the ſaid four Siſters; But when the ſaid *John Scot* dyed, which was in the year 1237, the ſaid King *Henry* the Third would not ſuffer the ſaid Earldome of *Cheſter*
[Page 51.] to [51]come to any of the Sons of any of the Siſters of the ſaid *John Scot,* though he had before permitted it to come to the Son of the eldeſt Siſter of the ſaid *Randle Blundevile.*

And whereas you ſay, that *if* Geva *had been but of the half-blood, ſhe would by all probability have buſled hard for ſo great an Eſtate in thoſe Ages, before ſhe had loſt it.* I do wonder very much at what you ſay, Becauſe, any Coſen that is of the whole blood (how many degrees ſoever the diſtance is) will inherit at Law, before a Brother or Siſter that is but of the half-blood; And whereas you ſay, *I am come to an excellent way of arguing, by ifs, and ands, and poſſibilities, by which means Anſwers may be*

made to any thing even to eternity. I do not offer from thoſe kinds of Arguments or Anſwers, to determine any thing certainly, but only make uſe of them to ſhew the uncertainty of ſeveral things which you urge; But, you pretend certainties from ſuch kind of Arguments, and particularly in this caſe of *Amicia:* For, all the reaſons which you alleadg againſt her would not [52]prove her to be a Baſtard, if thoſe Arguments that are brought on her behalf were all laid aſide. [Page 52.]

In your Anſwer to my *Defence* of *Amicia*, *p.* 42 & 43. you again cavil with me, without any juſt cauſe, and ſay, *that the caſe that I did there put, comes as near to the caſe of* Geva, *as an Apple to an Oyſter*, But whether it be ſo as you ſay, let the Reader judge. In your *Hiſtorical Antiquities*, *p*, 136. (which words of yours are alſo in the 10 & 11 *pages* of my *Defence* of *Amicia*) you have theſe words, viz. *And howbeit many Earldomes have deſcended to the heires Males, and not to the heires general, yet in this caſe were no heires Male, but two Females, an Aunt legitimate, who had it, and a Siſter not legitimate, and ſhew me a precedent whereever the heires of an Aunt inherited before the heires of a Siſter, both legally born and no heires-male left, unleſs in caſe of forfeiture by Treaſon, or ſome other great cauſe to hinder the ſame.* From theſe words of yours, I did not offer to raiſe any cavil, by telling you, that though honours or lands may be given to any perſons whatſoever, by [53]thoſe who have power to diſpoſe of the ſame, that yet they cannot properly be ſaid to deſcend to any but to the next heires, and therefore in point of *deſcent*, it is impoſſible that any one that is further off, ſhould be preferred before another that is nearer; Neither did I tell you, how you did name an *Aunt* legitimate, in ſtead of the *Son* of an Aunt legitimate that had it; But I ſuppoſing (as I think any other would have done from theſe words of yours) that your meaning was, that *Randle de Meſchines* muſt needs have more right to ſucceed in that Earldom of *Cheſter* than *Geva* had, becauſe, the ſaid *Randle* did enjoy the ſame, and that [Page 53.]

And whereas you ſay, page 8. that *you had rather give to any, eſpecially to my Family, more then is due, then leſs;* I could wiſh I had juſt cauſe to be of that opinion; For I am ſure you have omitted in our Deſcent, not only *Ranulfus,* who is nominated in *Doomesday Book,* but alſo *Richard Meſnilwaren* mentioned in your *Hiſtorical Antiquities,* page 111. *Roger de Menilgarin,* and * *William* and *Randle* his Sons, ſpoken of by you page 341. *Roger de Menilgarin* or *Mainwaring,* named by you page 362. Sir *Ralph Mainwaring* and Sir *Roger Mainwaring* his Son, both taken notice of by you pa. 330. and this upon a pretence, that they were Lords of *Warmincham,* whereas I am confident you will not deny but that the *Mainwarings* of *Warmincham* were alſo [19]owners of *Over-Peover* or the moſt part thereof, until Sir *Roger Mainwaring* gave *Peover* to his younger Son Sir *William Mainwaring,* and it was not long after, that the *Mainwarings* of *Peover* became Heirs male to thoſe *Mainwarings* of *Warmincham,* Sir *Warine Mainwaring,* Son of Sir *Thomas,* Son of the ſaid Sir *Roger,* dying without iſſue Male; Alſo I am ſure you denyed to do us right in one other particular, when you did it in the like caſe for another Family, which had not ſo clear proof for it as mine had.

* Note. *That page.* 117. *of your* Hiſtorical Antiquities, *you have placed* Randle *before* William, *contrary to what you have done Pa.* 341. *and contrary to* Monaſticon Anglicanum. Par. 1. Pa. 985.

[Page 19.]

As for your new quarrel, (page 9 of your Anſwer) with the Herald, for giving to Sir *Randle Mainwaring* my great Grandfather ſix *Barrulets,* as his moſt proper Coat, whereas you ſay, *ever ſince the time of* Sir *Roger Mainwaring, aſwell the Heirs of the right Line, as alſo the* Mainwarings *of* Peover *(after they became next Heirs Male) have conſtantly born the two barres, for ſome hundreds of years;* I might reply and tell you, that the *Mainwarings,* of *Peover* have not conſtantly given, *Argent,* two *Barres Gules,* ſince they became Heirs Male to the *Mainwarings* of *Warmin-*[20]*cham,* as appears by my Deeds; Neither do I think that Mr. *Cambden* did look upon the *Six Barrulets,* as a Coat

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moſt peculiar to us; for, in his *Britannia* in his Deſcription of the County of *Cheſter*, he names the *two Barres* as the Coat moſt proper to our Family, as appears by theſe words of his, when he writes of *Aſtbury Church, viz. Hæc enim perpulchra eſt, cujus porticus Occidentalis ipſam Eccleſiam, quæ ſane alta, ſua altitudine adæquat, & pyramidem adjunctam habet. In cæmeterio duæ jacent ſepulchrales Militum effigies, in quorum ſcutis ſunt duæ directæ areolæ ſive Barræ. Verum cum coloribus ſuis deſtituantur non facile quis dixerit fuerintne ex* Breretonis, *Mainwaringis, vel de* Venables, *quæ clariſsimæ ſunt in vicinia familiæ, & ejuſmodi* Barras *variantibus coloribus gentilitiis in clypeis geſtant.*

I rather think that my Great Grandfather having a Fancy to that Coat of *Six Barrulets* more than to that of the *two Barres*, becauſe the moſt antient of our Deeds were ſealed therewith, that Mr. *Cambden* gave him liberty to bear either the one or the other, which I [21] ſee not but it might be done, being our Family had for [Page 21.] ſeveral generations uſually born the one, and the other had been born by our Anceſtor, and had never been uſed by any other Family, and I am ſure, though you be ſo captious with us, that you your ſelf have of late years given a different Creſt, from what had for a long time been born by your Predeceſſors, becauſe you found a more antient Creſt in ſome of your Seals: And whereas you inſtance *in the great Suit betwixt* Scroop *and* Groſvenour *in the Marſhals Court, under* Richard *the* II. *concerning the bearing of a Coat of Arms, whereto both challenged a right and propriety by uſage, but no other way;* You thence rightly infer, that uſage makes a right in ſuch caſes; but when you ſay, that *uſage only makes a right;* you are miſtaken therein, For (not to mention the caſe in hand, where a mans Anceſtor hath born a Coat, which for ſometime hath been laid aſide, but never taken up by any other Family) a Man could then have no right to a Coat, which was given him by a King of Arms.

[22] I am ſtill of opinion, that you have branded ſeveral perſons [Page 22.]

in your Book with Baſtardy, without any proof thereof, but ſhall not yet concern my ſelf for any (beſides my own Anceſtor) except ſuch as you give me juſt occaſion to take notice of; And as for *Geva* and *Richard Bacun's* Mother, the firſt of them is not yet by you proved to be a Baſtard, and I ſhall certainly hereafter make it appear, that the ſecond was no Daughter of *Hugh Cyveliok*, ſo that *Amicia* is like to receive no *blow* at all; And if they were both Baſtards, it would be no prejudice to *Amicia*, becauſe I have in my former Book fully proved, that the gift to *Geva* was not a Gift in *Free-Marriage*, (as that to *Amicia* was) and you do not pretend at all, that any ſuch gift was made to the Mother of *Richard Bacun*.

And whereas you tell me *you believe that* Geva *and the wife of* Bacun *had never been ſpoken of, nor ſuſpected, nor doubted of by me, had not the caſe of* Amicia *been concerned;* I can aſſure you
[Page 23.] [23]I ſhould have been of the ſame opinion concerning them, if you had never mentioned *Amicia;* but if you had not pretended from their Caſes, to raiſe ſome Arguments againſt the ſaid *Amicia*, I ſhould never have troubled my ſelf about them, and therefore I forbear to tell you of all miſtakes, except ſuch as the caſe in hand doth give me juſt occaſion to obſerve. And whereas you ſay, page 12. that *you think you ſhall make good what you have alledged, with as much certainty as the nature of the thing and times will admit.* And alſo page 27. that *Geva* was *certainly a Baſtard, by as good proof as can poſſibly be expected in ſuch a caſe;* You do thereby implicitely confeſs, that you do not make thoſe things appear with any certainty at all.

I have now done with what you have ſaid concerning my *Epiſtle*, and ſhall now proceed to conſider of your *Anſwer* to the Book it ſelf; and becauſe you do in ſeveral places, again ſay, what you have ſaid heretofore, I hope the Reader will excuſe
[Page 24.] me, if I be conſtrained ſometimes to repeat the ſame [24]things, which I alſo have formerly ſaid.

In the 14 and 15 pages, you do tell me that I ſaid I would remind you of that which you had formerly been told, *viz.* Who thoſe *Heralds* were that gave to *Mainwaring* of *Peover* the quartering of the Earl of *Cheſter*'s Coat, in Queen *Eliſabeth's* time, and withal do ſay, that *I never told you, till long time after that part of your Book was written*, which, perhaps may be true, becauſe that part of your Book was written very long ſince, *viz.* in the year 1647. but I am ſure I have often told you of them, and you have alſo often ſeen the *Pedigree* it ſelf, under the hands of Mr. *Cambden*, and Mr. *Sampſon Erdeſwick;* the reſt in that place is only the repeating of your former quarrel with them, for ſuffering us to quarter the Earl of *Cheſter*'s Coat, but if we can really prove, that we are of the Half Blood, whatever you conceive of it, I ſuppoſe all indifferent perſons will think it but meet, that we ſhould have the like liberty that all others have in the like caſe, in theſe last ages of ours.

25 What you ſay in the 16 and 17 pages, hath been ſome of it formerly ſaid in your *Hiſtorical Antiquities*, and alſo in the 15 page of this your *Anſwer*, and there is nothing there that is new, but that you only alledge, that *as to my note of Dukes and Earls to have been antiently Judges of* Cheſter, *I ſhould have diſtinguiſhed the times, for that was not till the Reign of* Richard *the* II. *(who made Deputies to act in their ſtead) before which time there were no ſuch great perſons Judges there, nor from* Henry *the Sevenths time downwards;* But what neceſſity there was for me particularly to diſtinguiſh the times in which thoſe great Dukes and Earls were Judges of *Cheſter*, I do not know; For I only inſtanced in that to ſhew, that the place of *Judge of Cheſter* was antiently a place of great repute, and though it was ſome time after the death of *John Scot*, before any ſuch great perſons were made Judges of *Cheſter*, by the Kings of *England*, and that in all the times of the Earls of *Cheſter*, before that Earldom was united to the Crown, there could not be any Dukes or Earls made 26 Judges there, becauſe there were no ſuch perſons belonging to the then Earls (except *John Lacy* Conſtable of

[Page 25.]

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Cheſter, who was not made Earl of *Lincoln*, as appears in your *Hiſtorical Antiquities* page 270. till the 23 of *November* 1232. which was but four years and upwards before the death of *John Scot* the laſt of the ſaid Earls) yet there were ever antiently perſons of good quality that were Judges of *Cheſter*, and if it had not been always a place of great repute, the Kings of *England* would never have made ſuch very great perſons to have ſucceeded them therein.

As to what you alledge in the 18, 19, 20, and 21 pages of your *Anſwer*, I do not doubt (though you affirm it can never be proved) but that I have already in my former Book, given moſt perſons ſatisfaction, that *Amicia* was of the Half-Blood to Earl *Randle*, by a former wife of Earl *Hugh;* And whereas you object, that it is more rational to imagine, that *Earl* Hugh *matching his only Daughter, which he had by a former Wife, would have married her to as conſiderable a perſon as was either*
[Page 27.] *pro-*[27] *vided by himſelf, or his Son for his younger Children by a ſecond venter;* I do anſwer and ſay, That I am not certain whether *Amicia* was the only Daughter that Earl *Hugh* had by his former Wife; becauſe, I know ſome that pretend they can tell of ſome other Daughter or Daughters which the ſaid Earl *Hugh* had by his ſaid Wife; but I do confeſs, I have never ſeen juſt proof of any but her; but ſuppoſing her to be the only Child by his firſt Wife; I have in my former Book, pa. 23, 24, and 25. ſhewed that there is no ſtrength in this Argument of yours; And I may here further add, that if you will ſearch for examples, you may find very many, where the elder Siſters, ſometimes, becauſe ſwayed by their affections, and ſometimes for other reaſons, have not been married to ſo great perſons as the younger Siſters have been; neither can you tell what portions Earl *Hugh* gave to *Amicia*, or to any of his other Daughters: neither is there any neceſſity that the elder Siſter, becauſe by a former wife, muſt have as great a portion as a
[Page 28.] younger Siſter by a [28]latter Wife; becauſe, many times perſons are not able to give ſo great portions in their younger days, as

afterwards: and becauſe, the Children of the living Wife are oftentimes better provided for, than thoſe of the dead Wife; and of this, I could if I pleaſed, inſtance in ſome that I know; and in caſe the Father dye, and leave onely iſſue Female by a firſt, and a Son and iſſue Female by a latter wife (as in this caſe) there is great likelihood (beſides the advantage that the Siſters by the latter wife would have by being Heirs at Law to their Brother, he dying without iſſue) that the Brother will naturally be more kind to thoſe Siſters that are of the Whole-Blood, and about the ſame age, and bred up with him, than he will be to her that is but his Half-Siſter, and much older then himſelf.

And whereas you ſay, pa. 18, and 19. that *the expectation of Earl* Randle Blundevile's *Siſters of the Whole Blood (which I conceive added to their fortunes, whereby they matched to ſo great perſons) could not be much, being grounded upon great* [29]*uncer-* [Page 29.] *tainties, ſince it could not be foreſeen (when they married) that their Brother ſhould dye without iſſue, who afterwards married two wives ſucceſſively, purpoſely to have iſſue of his own Body, to inherit his own Lands;* I do think if you conſider it, you cannot in good earneſt believe, that the ſaid Earl *Randle Blundevil*'s four Siſters were married before the ſaid Earl married his firſt wife, whatever they were when he married his ſecond wife; For, *Bertred* the Mother of *Randle Blundevil* being aged but twenty four years when her Husband Earl *Hugh* died, as appears, *Rot. de Dominabus pueris, &c. in Scacc. penes remem. R. ſub Tit. Linc. Rot.* 1. and the ſaid *Randle,* as appears in your *Hiſtorical Antiquities,* page 146. being married to *Conſtance* the Widow of *Geffrey,* fourth Son of King *Henry* the II. and Daughter and Heir of *Conan* Duke of little *Brittain,* and Earl of *Richmond,* in the year 1187. at which time the ſaid *Bertred* was but about Thirty years old; Can any one think that all the five Children of the ſaid *Bertred* were then married?

[30]And whereas you ſay, that it was I who informed you of [Page 30.]

you thought it to be very clear, that whenſoever there were no heirs-Male left, if the honour went to any of the Kindred, the *King* did alwayes prefer that perſon who was next of blood to it, except in caſe of Treaſon, or the like, and did thereupon deſire me to ſhew you a precedent to the contrary, if I ſo could, and you inſtancing in the *Earldome*, and not in the Lands, I did thereupon ſhew you where one that was a *Baron* by Writ, dyed
Page 54.] without heir Male, [54]leaving two Siſters only, and the *Baronry* came to the Husband of the younger Siſter, and not to the Husband of the elder Siſter, it being the pleaſure of the King to call Sir *Hunt Bourcher*, who had Marryed the younger Siſter, to the Parliament, and not to call Sir *Thomas Nevil*, who had Marryed the elder Siſter; And if this be not a like caſe to that of *Geva* and Earl *Randle* (if *Geva* was legitimate) I am ſtill very much miſtaken; And whereas you now demand of me, If *Geva* was legitimate, Why the *Lands* of *Richard* Earl of *Cheſter* did not come to her, whatever the Earldom did: Though I cannot give you the certain reaſon, becauſe the thing was done ſo long ſince, yet I can ſhew you ſeveral poſſibilities why they might not; For, either it might be the will and pleaſure of the then King, that *Randle de Meſchines* ſhould have the Eſtate as well as Earldome, and that *Geva* ſhould have recompence made her ſome other way, (as the Siſters of *John Scot* Earl of *Cheſter* in the like caſe afterwards had) or perhaps ſhe might be of the
[Page 55.] half-blood to Earl *Richard*, [55]and *Randle de Meſchines* be heir at Law before her, or perhaps the ſaid Earl *Richard* having a greater kindneſs for the ſaid Earl *Randle* than he had for *Geva*, (there being ſometimes great unkindneſſe betwixt Brothers and Siſters) might give his Eſtate to the ſaid *Randle de Meſchines*.

Thoſe Arguments of mine which you mention *p.* 44. and are pretended to be Anſwered by you, *pag.* 45, 46 *&* 47. remain yet in their greateſt ſtrength, and are not at all anſwered by you, nay, the one of them is ſo farr from being anſwered, that it is not underſtood by you, unleſs you only pretend not to underſtand

it, becauſe, you perceive you cannot give an anſwer to it, and I rather think that to be the truth of the caſe, Becauſe you have not recited my Argument as I did expreſs it; For you recite it thus; Becauſe *Coke* upon *Littleton*, *fo.* 21. *b.* tells us that theſe words *in liberum Maritagium are words of Art, and ſo neceſſarily required:* and there you break off abruptly; Whereas I told you that the Deed which you alleadged to be made [56]to *Geva* would not at all concern *Amicia*, if *Geva* was a baſtard, becauſe it was no gift in Frank-marriage, as that gift to *Amicia* was; And for a proof thereof I told you, that my Lord *Coke* upon *Littleton* in the place aboveſaid did tell you, that *theſe words* in liberum maritagium *are ſuch words of Art, and ſo neceſſarily required* (in theſe kind of gifts) *as they cannot be expreſſed by words equipollent, or amounting to as much;* And he alſo there gave you the reaſon, which was, that theſe words *in liberum Maritagium* did create an Eſtate of Inheritance, againſt the general Rule of the Law, and therefore the Law required, that it ſhould be legally purſued; And to explain this, he alſo ſaid, that *if a man give Lands to another with his Daughter*, in connubio ſoluto ab omni ſervitio, *&c. yet there paſſeth in this caſe but an Eſtate for life;* For although thoſe words be the ſame in ſenſe, as the words *in libero maritagio* be, yet being not the very ſame words, they do not create an Eſtate of Inheritance; But you contrary to all this, would not believe my Lord *Coke*, if he ſhould have ſaid that the words *in libe-*[57]*ro conjugio* did make but an Eſtate for life, (which he hath indeed by conſequence ſaid) But you will have the words *liberum conjugium* to create an Eſtate of Inheritance, as well as the words *liberum maritagium* (which no man before you ever ſaid) Whereas no words that are equipollent, or amounting to as much can do it, it being impoſſible to make an Eſtate in *Free-marriage*, if there be wanting either the word *liberum*, or the word *Maritagium*.

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Alſo, as the words *in libero conjugio* can make but an Eſtate for life, ſo it is alſo clear, that in your Deed of Earl *Randle* to

Geva, there was no more intended than an Eſtate for life, it running all along in the ſingular number *Et teneat bene & in pace*, &c. *ut melius & liberius tenuit*, And it is likely the Deed of Earl *Hugh* did run after the ſame manner, by that expreſſion *ſicuti Comes* Hughes *ei in libero conjugio dedit*, But I believe the *Baſſets* did afterwards enjoy the ſaid lands, though how, or by vertue of what Deed, I am not able to declare; For, in *Monaſ-*
[Page 58.] *ticon Anglica-*[58]*num*, *Part* 1. *p.* 439, and in your *Hiſtorical Antiquities*, *p.* 113. (but miſprinted 121.) I find *Geffrey Ridell* and *Ralph Baſſet* called the heires of the ſaid *Geva;* Now if thoſe perſons were the heires of her body, and the aforeſaid Deed a Gift in *Frank-marriage*, Why did not Earl *Randle* confirm or grant thoſe lands to her heires, as well as to her, And if they were not the heirs of her body, ſhe could not be a *baſtard*, For, as my Lord *Coke* on *Littleton*, *fol.* 3. *b.* tells you, *A Baſtard can have no heir but of his own body.*

And whereas I brought another Argument to prove that this Gift of *Geva* could not be a Gift in *Frank-marriage*, Becauſe my Lord *Coke* ſays, that one of the things incident to a Frank-marriage is, that the *Donees* ſhall hold freely of the *Donour* till the fourth degree be paſt, which cannot be in *Geva*'s caſe, Becauſe there was no *Donees*, but one *Donee* only, and the Eſtate could not continue until the Fourth degree was paſt, becauſe it was only for *Geva*'s life; You tell me that my Lord *Coke* upon
[Page 59.] *Littleton*, *fol.* 21. *b. ci-*[59]*teth* Peter Saltmarch's *Caſe*, *and* Fitz-Herbert *de natura brevium*, *fol.* 172. *that lands may be given by a Man to his Son in Free-marriage, and why not to his Daughter alone in Free-marriage?* But I pray you, How can there be a Gift in *Free-marriage*, if there be no *Marriage* at all? and, How can there be a *Marriage*, if the Man or Woman be *alone?* But you miſunderſtand this place (as you do many others) For, my Lord *Coke*, if you obſerve him well, doth not there ſay, that ſuch a Gift can be made with a Man *alone*, or with a Woman *alone*, But there tells you, *that a gift in free-marriage may be either to*

a Man with a woman, or as ſome have held, to a Woman with a Man, and for proof thereof, cites *Peter Saltmarſh* his caſe, and *Fitz-Herbert;* And this is no more than what I ſaid in the 49 *Page* of my former *Book*, where I alſo ſhewed you how *Bracton* did therewith accord; But there is none of them that ſaith as you do, That land may be given in *Frank-marriage* to a Man without a Woman, or to a Woman without a Man.

In your 48 & 49 *Pages*, you would willingly perſwade the Reader that [60]*Earl* Randle *de* Gernoniis *Father to Earl* Hugh Cyveliok *was Marryed by* Robert *Earl of* Glouceſter *unto* Maude *his Daughter, thereby to draw him to the part of Queen* Maude *his Siſter, about the very year* 1139. *before which time we find no mention in antient Hiſtorians of* Randle's *acting againſt King* Stephen, *but in that very year we do, and then by ſome of them ſtiled Son-in-law to the Earl of* Glouceſter. But I pray you, Why is it not full as likely, that *before* that time, *Randle de Gernoniis* was Marryed to the Daughter of the ſaid Earl of *Glouceſter*, and thereby was the more eaſily drawn to that party, to which he ſtood ſo near related, as that, that match ſhould be made *purpoſely* to draw him to that party? And how could you hear much of that Earl *Randle*'s actings againſt King *Stephen*, before the year 1139? ſeeing *Gervaſius* a *Benedictine Monke of* Canterbury (who lived in the Reign of King *John*) tells us, in his *Chronicles* or *Annalls*, *col.* 1345. *l.* 60. that it was in the year 1138, when *Robert* Earl of *Glouceſter did begin to quarrel with the ſaid King* Stephen. [Page 60.]

[61]And whereas you yet ſeem unſatisfied that Earl *Hugh* was of ſuch an age as probably to have had another Wife before *Bertred*, and do now ſay, *p.* 49. *if we reckon by* utmoſt poſſibilities, *that Earl* Hugh *could not poſſibly be above ſixteen or ſeventeen years older than* Bertred; I do very much wonder thereat, ſeeing I have formerly from the Argument which you uſed to prove it to be otherwayes, made it manifeſt, that he might poſſibly be ſeveral years above double her age, and that [Page 61.]

ſo clearly, that I am confident, no man beſides your ſelf, will offer to deny the ſame; For I then told you that whether the Marriage of *Robert* Earl of *Glouceſter* with *Mabill* Daughter and heir of *Robert Fitz-Hamon* was according to *Selden* in the year 1109. or according to *Stow* in the year 1110. the ſaid *Mabill* might have *Maude* her ſecond Daughter in the year 1112, which *Maude* if ſhe was Marryed to Earl *Randle de Gernoniis* in the year 1128, when ſhe was ſixteen years of age, might have her Son *Hugh Cyveliok* in the year 1129. which if true, the ſaid Earl
[Page 62.] *Hugh* was [62]fifty two years old at his death, For he died in the year 1181. and if ſo, then he was four years above twice the age of *Bertred*, For ſhe was but Twenty four years old when the ſaid Earl *Hugh* died, as appears *Rot. de Dominabus pueris*, &c. *in Scacc. penes Remem. R. ſub Tit. Linc. Rot.* 1. And it is certain, that the ſaid Earl *Hugh* was Earl of *Cheſter* about four years before his Wife *Bertred* was born, beſides what age he was of, when his Father died, and his Daughter *Amicia* was Married in his life time, and none knows how many years before his death. And if the Marriage of the ſaid *Robert* Earl of *Glouceſter* with the ſaid *Mabill* was in the year 1109. then he might poſſibly be Five years above double the age of his Wife *Bertred;* And this is the more likely to be true, Becauſe, though Mr. *Selden* be a later Writer, than Mr. *Stow* is, yet Mr. *Selden* cites one that lived long before Mr. *Stow*, as will appear by the old Engliſh Rithmical Story, attributed to one *Robert* of *Gloceſter*, and recited in the 647. *Page* of Mr. *Seldens* Titles of Honour.

[Page 63.] [63]In your *Anſwer*, *pag.* 50, 51, 52 & 53. you endeavor to weaken the Third and Fourth reaſons which were brought as concurrent proof on the behalf of *Amicia*, by ſaying, *that* Hugh Cyveliok's *Wife was a witneſs to her Husbands Deed, which a Wife cannot now be, ſhe being not capable to be a Witneſs, either for or againſt her Husband*, whereby you would inſinuate a change of the Law in that particular from what it was formerly, and you alſo ſay, *that if* Hugh Cyveliok *had had a former Wife*,

ſure Raph Mainwaring *would have called his Daughter after her, and not after the then Counteſs;* And you there make nothing of *Roger Mainwaring*'s calling *Randle* Earl of *Cheſter* and *Lincoln* his Uncle in a Deed, nor of *Henry de Audley*'s being a Witneſs to the Deeds of *Randle* Earl of *Cheſter* and *Lincoln*, and of *Robert de Ferrars*, (which later you ſay is far fetcht) nor of *Raph Mainwarings* and *Roger Mainwarings* being Witneſſes to ſo many Deeds of thoſe that were Earles of *Cheſter* in their times.

[Page 64.] 64 But to theſe things, I ſay, that the Law is ſtill the ſame as it was formerly, in the particular by you here mentioned; For, both antiently and at this day alſo, I know nothing that hinders, but that the Wife may ſubſcribe as a Witneſs to a Deed which her Husband doth make, and though ſhe neither antiently could, nor yet can be a witneſs for or againſt her Husband, yet there is this uſe of it, that if the Wife ſurvive her Husband, and it come to be controverted amongſt other parties, whether ſuch a Deed was Sealed by him, or not, ſhe in the time of her Widowhood, may be a good Witneſs for the proving of the ſame.

And as to the calling of Sir *Raph Mainwarings* Daughter by the name of *Bertred* after the preſent Counteſs, and not after the name of *Hugh Cyvelioks* firſt Wife; That is no wonder at all, it being more ordinary to call Daughters after their Godmothers Names, than after the names of their own Grandmothers, and eſpecially when the Godmothers are of great quality; Now the ſaid *Amicia*'s Daughter being [Page 65.] 65 called *Bertred* (which is a very unuſual name) it is more than probable, (according to what you expreſſed to me under your hand in *April* 1664.) that *Bertred* the Counteſs was Godmother to the ſaid *Bertred Mainwaring*, And if ſo, it is very unlikely that *Amicia* was illegitimate; For Wives are ſeldome Godmothers to their Husbands Baſtards, or to the Children of ſuch Baſtards.

Alſo, Sir *Raph Mainwaring* and Sir *Roger Mainwaring* and *Henry de Audley* the Son-in-law of the ſaid Sir *Raph Mainwaring* being ſo often Witneſſes to the Deeds of the Earls of

Cheſter, and to the Deeds of their very near Relations, doth certainly ſhew there was then a very great and conſtant intimacy betwixt the ſaid Families.

And though you pretend that Sir *Raph Mainwaring* was very converſant with the Earle, becauſe he was Judge, and therefore came ſo often to be a Witneſs, and ſay, that *we may find the like number of Charters or more, to which* Philip Orreby *Judge of* Cheſter *was witneſs in like nature;* I conceive that
[Page 66.] you are deceived therein, although [66]*Philip Orreby* was Judge of *Cheſter* perhaps longer than Sir *Raph Mainwaring* was; For I do believe that I can make it to appear by what Deeds I have, and what Deeds I have ſeen of others, that Sir *Raph Mainwaring* and his Son Sir *Roger Mainwaring* were witneſſes to more Deeds of *Hugh Cyvelioks* and *Randle Blundevil* than any other perſons of any one Family were; Add hereunto (which I have in my former Book mentioned) that Sir *Roger Mainwaring* in a Deed of his own calls *Randle* Earl of *Cheſter* and *Lincoln* his *Uncle*, and how I did there obſerve, that though the Writers of Hiſtories, did ſometimes give to Baſtards, the name of Coſen, Brother, Uncle, Son, and Daughter, I did believe you could hardly find any one that you could certainly prove to be a Baſtard, or the Son of a Baſtard, that did preſume in a Deed to call ſo great a perſon as the Earl of *Cheſter* was, his Brother or Uncle, unleſs he came to be a very great Perſon himſelf; And this is ſo true, that in the 53 *Page* you are forced to confeſs that ſuch Precedents are ſcant, but yet you think you
[Page 67.] have found one, [67]viz. *Randle de Eſtbury*, or *Aſtbury*, who in a Deed mentioned in the *Addenda* of your *Hiſtorical Antiquities* is called, *the Earl of* Cheſter's *Nephew, and is put the laſt of all the witneſſes, and was certainly but an ordinary Gentleman, nor Knight nor Lord.* But this Precedent will fail you, for two Reaſons, *Firſt*, Becauſe you do as good as confeſs that you cannot prove him to be a Baſtard, (and he might perhaps be a younger Brother, or Son of a younger Brother, and ſo not neceſſarily a Knight or a Lord) And *Secondly*, Becauſe he doth not

call himſelf the Earles Nephew, but is called ſo by others, and that is ſo far from contradicting, that it doth confirm what I ſaid in my former *Book;* Alſo if you obſerve it, there were no Witneſſes to the ſaid Deed, beſides the ſaid *Randle de Aſtbury*, except *David de Malpas* (whom I conceive was *Baron* of *Malpas*) and *William* his Son.

And whereas you ſay, *you ſhould be glad to find out the Extraction of the ſaid* Randle *de* Aſtbury, *if he were not a Baſtard.* Though it be perhaps impoſſible now to tell you his Extraction certainly, becauſe he lived ſo long ſince, [68]and we only find him a witneſs in one Deed, Yet I doubt not but to ſatisfie the Reader, that he and his Father and Mother might all be Legitimate, For, (not to ſay, that he might be a Son of ſome other Daughter of the ſaid *Hugh Cyveliok* by his former Wife) he might poſſibly be the Son of *Roger*, Son of *Hugh Cyveliok;* And I know no great reaſon why the ſaid *Roger* ſhould by you be ſuſpected to be a baſtard, For, you only find him (as appears by your *Hiſtorical Antiquities, p.* 134. and in my Firſt *Book, p.* 1.) mentioned *as a Witneſs to a Deed of his Brother* Randle's, *to the Abbey of Saint* Werburge: So that you conceive him to be a baſtard, Becauſe neither he, nor any iſſue-Male of his, ſucceeded in the Earldome of *Cheſter* after the death of *Randle Blundevil*, Whereas the ſaid *Roger* might be lawful, and be Father to this *Randle de Aſtbury*, and yet both he and the ſaid *Randle de Aſtbury* might dye before the ſaid *Randle de Blundevil*, For he lived very long, and was Earl of *Cheſter* above Fifty years; Alſo it is very ſtrange, if *Amicia* was a Baſtard, and the Father or [69]Mother of the ſaid *Randle de Aſtbury* was alſo a Baſtard, that thoſe Baſtards could find none to call their Children after, but the then *Counteſs*, and the then *Earl*, For the Daughter of *Amicia* was called *Bertred* after *Randle Blundevill*'s Mother, and *Randle de Aſtbury* was of the ſame Name with the ſaid Earl; But admitting that the ſaid *Roger* was a Baſtard, Why might not *Randle de Aſtbury* however be his Son? and then, What neceſſity (of what you ſay in your *Addenda*) of either finding out

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another Baſe Son, or another Baſe Daughter of the ſaid *Hugh Cyveliok;* But you have been very willing to charge him with many Baſtards both Sons and Daughters, although I find no great Reaſon to ſuſpect that he had any at all unleſs *Paganus de Milton*, and it is poſſible in that caſe, you having neither the Deed, nor a Copy of the Deed by you, that you might take *Hugh Cyveliok* for *Hugh Lupus*, as well as in another Deed (as will anon appear) you did take *Randle Blundevil* for *Randle de Gernoniis*.

[Page 70.] [70]I am ſtill of the ſame opinion that I was formerly of, *viz.* That *Richard Bacuns* Mother was not a Baſe Daughter of *Hugh Cyveliok*, nor any Daughter of his at all, but that ſhe was daughter to *Randle Meſchines*, and Siſter to *Randle de Gernoniis;* And I think thoſe reaſons which I have given in my former Book do fully prove the ſame. And albeit you tell me in the 54, 55, and 56 pages of your latter Book, that *truly I am deceived in it*, yet I do not doubt but to ſatisfy all the world, that it is you (and not I) that are deceived therein; And whereas you ſay, *it is true (as I obſerve) that there was no ſuch Archbiſhop of* York *called* Will. *nor Biſhop of* Cheſter, *whoſe Chriſtian name began with* R. *both living at one time, either in the time of* Randle de Blundevill *or* Randle de Gernoniis. I anſwer, I did make no ſuch obſervation at all, but the contrary, For, I ſhewed you that in the time of *Randle de Gernoniis; William*, Siſters Son to King *Stephen*, was Archbiſhop of *York*, for a time, *viz.* about 1142 or 1143. (though he was afterwards
[Page 71] ouſted of it [71]again till 1152, or 1153.) and *Roger Clinton* was Biſhop of *Coventry* and *Litchfield*, (which then was the ſame with the Biſhop of *Cheſter*) from the year 1128, until the year 1148 or 1149. And I then alſo told you, that there was no *William*, Archbiſhop of *York* at any time during the life of *Randle Blundevill*, nor any man Biſhop of *Cheſter*, whoſe Chriſtian name began with *R.* except *Richard Peche*, who died about the time that *Hugh Cyveliok* died, *viz.* in 1182 (though ſome ſay, in

1181. and ſome in 1183.) at which time *Randle Blundevill* could not be of age to Seal any kind of Deed, becauſe *Bertred* the ſaid *Randle*'s Mother, was then but about Twenty five years old; and this Argument you perceive to be ſo ſtrong againſt you in this point, that you have no way to avoid it, but by giving a ſtrange anſwer to it, which is, that *you do conceive the Roll from whence the Deed in* Monaſticon (Par. 2. Pa. 267.) *is written, is miſtaken in* Will. and *R. and miſwrit therein from the Original Chart it ſelf;* Which liberty if a Man might take, he might anſwer any thing in the world; and your reaſon [72]for ſo [Page 72.]
ſaying is, *Becauſe* Richard Bacun *in his ſaid Deed doth ſay, that he had procured the warranty of* Randle *Earl of* Cheſter *his Uncle, for the ratifying of that Grant; and the very next Deed following in the Roll, and tranſcribed in the* Monaſticon, *is the Deed of* Randle *Earl of* Cheſter, *with Confirmation and Warranty accordingly, whereunto* Roger Lacy, *Conſtable of* Cheſhire *is a witneſs, who only lived in the time of* Randle Blundevill, *and no other Earl of* Cheſter, *as I may ſee cleerly proved among the Barons of* Halton *in your Book, nor is there any other Deed of Confirmation and Warranty to be found by any Earl, ſave this; wherefore* (you ſay) *certainly it muſt be* Randle Blundevil *whom* Richard Bacun *calleth Uncle in his own Deed of the Foundation of the ſaid Priory.* And you alſo ſay, *the Biſhop of* Cheſter *(being alſo Biſhop of* Litchfield *and* Coventry *at that time) he was not then ſubject to the juriſdiction of* York *but* Canterbury; and you alſo ſay, *That there was no Archbiſhop of* York *called* Will. *nor Biſhop of* Cheſter, *whoſe Christian name began with* R. *both living at one time, either in the time of* Randle [73]Blundevill *or* [Page 73.]
Randle de Gernoniis, *that you can find.*

To which I anſwer, That it is not to be doubted, but that *Richard Bacun* did obtain the Warranty and Confirmation of that *Randle* Earl of *Cheſter*, who was his Uncle, and then living; neither is it to be doubted, but that the Deed, to which *Roger* Conſtable of *Cheſhire* was a witneſs, was the Deed of *Randle*

Blundevil, I having proved it to be ſo, in the 56 page of my former Book, becauſe *Roger* Conſtable of *Cheſhire* was living in the time of no other *Randle* but *Randle Blundevil,* ſo that you did not need to ſend me to ſee that clearly proved among the Barons of *Halton in your Book;* but the Deed of Confirmation of that Earl who was Uncle of *Richard Bacun,* is not in the *Monaſticon,* but was probably loſt, as many other antient Deeds were: and that Deed of *Randle Blundevill,* which is there, is but another Deed of Confirmation, according to the mode of thoſe times, when, it was uſual to obtain ſuch, from ſeveral
[Page 74.] Princes, ſeveral Generations one after [74]another; and for proof hereof, I did deſire you to read *Monaſticon Anglicanum,* Par. 2 Pa. 24, and 25. where you might find King *Henry* the I. reciting and confirming what had been given to the Priory of *Huntendune,* and pa. 27. how King *Henry* the III. did the like, and yet there was a greater ſpace betwixt King *Henry* the I. and King *Henry* the III. than there was betwixt *Randle de Gernoniis* and *Randle de Blundevil;* and very many others of the like nature, may be found, by thoſe who will take the pains to make ſearch in the ſeveral *Monaſticons.*

Alſo, it is very ſtrange, that you ſhould fancy that the Roll, where the ſaid Deed in *Monaſticon* was written, ſhould be miſtaken both in *Will.* and *R.* eſpecially ſince the word *Will.* was the firſt word in the ſaid Deed; neither is it a badge of any miſtake in the ſaid Deed, becauſe the Archbiſhop of *York* is named in it, though the Biſhop of *Cheſter* (being at that time the ſame with the Biſhop of *Coventry* and *Litchfield*) was not then
[Page 75.] ſubject to the Juriſdiction of *York,* but *Canterbury;* For, [75]the Archbiſhop of *York* was not named upon that account, but, becauſe ſome of the places mentioned in the ſaid Deed, were within the Province and Dioceſſe of *York,* as particularly *Roſington* was, it being within the *Weſt-riding* of *Yorkſhire;* but I ſuppoſe your principal reaſon why you ſuſpect the *Roll* was miſtaken is, becauſe you ſay, *there was no ſuch Archbiſhop of* York,

called Will. *nor Biſhop of* Cheſter, *whoſe Chriſtian name began with* R. *both living at one time, either in the time of* Randle Blundevill *or* Randle de Gernoniis, *that you can find.* Which ſaying of yours ſeems very ſtrange to me, but I believe all your doubt is about the *Will.* that was Archbiſhop of *York*, becauſe Dr. *Heylin* (a late Writer) in his *Catalogue of Biſhops* doth not mention the ſaid *Williams* being choſen Archbiſhop immediately upon the death of *Thurſtan;* for I am confident that you are well ſatisfied that *Roger Clinton* was Biſhop of *Cheſter* (as appears by the Third Part of the *Monaſticon*, page 218. as alſo by Biſhop *Godwin*, *Ifaackson*, Doctor *Heylin*, *Simeon Dunelmenſis*, *Matt. Paris*, and many [76]other antient Authors) from about 1128. [Page 76.] until about the year 1148. or 1149. which fell out to be in the time of *Randle de Gernoniis*, for he was Earl, (as appears in your Book) from about the year 1128. till about the year 1153. And I doubt not but to make it as clear, that a *William* was Archbiſhop of *York* in the time of the ſaid *Randle de Gernoniis* and *Roger Clinton*, and though the ſaid *William* was afterwards ouſted, yet whilſt he enjoyed that Archbiſhoprick, he was, and would in Deeds, and otherways, be owned as Archbiſhop of *York;*

Now that a *William* was Archbiſhop of *York*, in the time of the ſaid *Earl* and the ſaid *Biſhop*, I have already ſhewed you in my former Book, out of *Iſaackson's Chronology*, and ſhall thus make it further to appear;

If you look into Biſhop *Godwin*'s *Catalogue* of the *Biſhops* of *England*, printed at *London* 1615, page 581. in the life of *Henry Murdack*, Archbiſhop of *York*, you may find him ſaying thus.

1142. *Stephen* 8. [77]*King* Stephen *had a kinſman named* William, *(that was Son unto* Emma his Sifter, by Earl *Herbert)* a Man no leſs noble in Mind and Vertue, then Stock and Lineage. [Page 77.] He being Treaſurer of *York*, was now elected unto the Arch-

biſhoprick, and having obtained Conſecration alſo, ſent to *Rome* for his Pall. His ſpeed there was not ſo good as he looked for; by ſome Adverſaries many exceptions were taken againſt him, whereby it came to paſs, not only his Suit was put off, and ſtayed for that time, but alſo Proceſs awarded to admoniſh him to come thither in Perſon to anſwer the accuſations laid againſt him. At his coming to *Rome*, he found his Adverſaries many and Mighty. And among the reſt it is remembred, that St. *Bernard*, then living, was very earneſt againſt him. *Eugenius* the Pope, had been brought up in the Abbey of *Clareual* under *St. Bernard*, together with *Henry Murdac*, whom *Williams* adverſaries had ſet up to be a Suiter for his Archbiſhoprick. The
[Page 78.] Pope being thus carried away with the per-[78]ſwaſion of his old Acquaintance, and ſome ſhew of matter, was content to deprive *William*, and to place *Henry Murdac* in his room, whom he cauſed to be Conſecrated preſently, and ſent him home into *England* with his Pall. King *Stephen* hearing this Newes, was much grieved with the diſgrace of his Nephew, which all Men judged undeſerved. Therefore He ſtood upon Termes with the new Arch-biſhop, and required him to Swear unto Him fealty in ſome extraordinary manner; and when he denyed, eaſily took occaſion of diſpleaſure againſt him. The Townſmen of *York* that loved *William* exceedingly for his Gentleneſs and Vertuous behaviour amongſt them; hearing how the King was affected; refuſed to receive *Murdac* into their City. For this reſiſtance he ſuſpended them: which notwithſtanding, *Euſtach* the King's Son, commanded Service to be ſaid as at all other times was accuſtomed. By means hereof, as alſo by reaſon that the King's Officers were very terrible and heavy enemies unto all that had laboured for the Deprivation of *William:* Seditions
[Page 79.] and Tu-[79]mults were daily raiſed in the City, amongſt which a certain Archdeacon, a Friend of the Archbiſhop, was ſlain. Two or three years theſe ſtirs continued, till at laſt, the Kings wrath (by means) being appeaſed, *York-men* were content to receive their Archbiſhop peaceably. He governed very auſterely the

ſpace of ten years, dyed *Octob.* 14. 1153. at *Sherborne*, and was buryed in his Cathedral Church. And when *Biſhop Godwin* hath thus ſaid, he preſently afterwards tells you, how the ſaid *William* (there called *Saint William*) after the death of *Henry Murdac* was again reſtored to the ſaid Archbiſhoprick.

Alſo, if you look in *John Brompton*'s Chronicon, *col.* 1028. *l.* 63. in the life of King *Stephen*, you may find him thus ſaying;

Dicto autem Thurſtino Eboracenſi *Archiepiſcopo Monaſterii* Fontanenſis *aliorumque octo fundatore, ut dictum eſt, decedente* (and he dyed, ſayes the ſaid *Brompton, col.* 1028. *l.* 25. in the year 1140. with which Biſhop *Godwin* doth [80]accord) *Singuli* [Page 80.] *Eccleſiæ Eboracenſis Canonici, beatum* Willielmum *ejuſdem Eccleſiæ Theſaurarium præferunt, tam pro honeſtate morum, quam excellentia meritorum. Iſte namque* Willielmus *ex ſpectabili proſapia Regis Stephani ortus, præclaris natalium titulis fuerat inſignitus; erat enim filius potentiſſimi viri Comitis Herberti. Qui quamvis poſt deceſſum dicti Archiepiſcopi* Thurſtani, ad ſedem Eboracenſem electus fuerat; *invidia tamen & impetuoſus amor dominandi quemdam ejuſdem Eccleſiæ Archilevitam adeo in regionem diſſimilitudinis traxerant, ut inter eligentes diſcidium excitavit, ipſum* Willielmum *a ſaniori parte electum impediens licet de ejus electione clerus & populus acclamaſſent laudum præconia. Suſpenditur igitur cauſa ad Apoſtolicæ ſedis examen provocata.*

See alſo the ſaid *Brompton* to the ſame purpoſe, *Col.* 1041. *l.* 10.

Alſo *Roger Hoveden* who lived in the time of King *Henry* the Second, King *Richard* the Firſt, and King *John;* in the Firſt Part of his *Annalls*, Printed [81]at *Frankfort*, 1601. *Page* 490. *l.* 51. [Page 81.] writes thus of the Reſtitution of the ſaid *William, eodem anno obiit* Henricus *Eboracenſis Archiepiſcopus, quo defuncto,* Willielmus *Archiepiſcopus, quem Papa* Eugenius *ſuſpenderat, Romam profectus eſt, & invenit gratiam apud* Anaſtaſium *Papam, &*

redditus eſt ei Archiepiſcopatus Eboracenſis. And I think it is not to be doubted, though I have not yet found the place, but that the ſaid *Hoveden* doth ſpeak of his being choſen after the death of *Thurſtan*, becauſe *Iſaakſon* in his *Chronology*, cites *Hoveden* for what he there ſayes, but he names not the Page.

Alſo, *Thomas Stubbs* (a Dominican) writing of the Archbiſhops of *York*, *col.* 1721. *l.* 15. thus ſayes,

Viceſſimus nonus ſucceſſit in Archiepiſcopatum Eboracenſis *eccleſiæ* Henricus Murdak *Ciſtercienſis ordinis Monachus ac profeſſor probatiſſimus, vir magnæ ſanctitatis & abſtinentiæ laudabilis. Defuncto namque, ut præmittitur,* Thurſtino Eboracenſi *Archiepiſcopo, convocatiſque ad electionem pontificis Canonicis eccleſiæ*
[Page 82.] Eboracenſis, Willielmus *ejuſ-*[82]*dem Eccleſiæ Theſaurariis & Canonicus exigentibus ſuis meritis a Majori & ſaniore parte in Archiepiſcopum eſt electus. Erat enim ſtrenuiſſimi Comitis* Herberti *filius ex* Emma *ſorore Regis* Anglorum Stephani *progenitus. Vir quidem genere nobilis ſed morum excellentia & vita mundiſſima incomparabiliter inſignis. Interea vero* Osbertus *archidiaconus* Eboracenſis *invidiæ ſtimulo agitatus, facta inter eligentes diſſentione, confirmationem ipſius electi licet ab omnibus dignus haberetur pertinaciter impedivit: ſuſpenſo igitur negotio partibuſque coram* Romano *pontifice ſuper hujus electionis diſcuſſione perſonaliter vocatis, idem* Willielmus *perſequentibus illum adverſariis ſuis & injuſte accuſantibus conſecrationis gratiam minime potuit optimere. Lite ergo in curia* Romana *ſub Papa* Innocentio *ſecundo*, Celeſtino *ſecundo, &* Lucio *ſecundo per annos quinque & amplius debito proceſſu currente, nichil inventum eſt quod ejus conſecrationem deberet elongare. Verum ſummus Paſtor* Eugenius Ciſtercienſis *ordinis Monachus anno Dominicæ incarnationis* M. C. xlvi. *in Papam conſecratus electionem dicti* Willielmi *non ratione perſonalis*
[Page 83.] *inha-*[83]*bilitatis, ymmo pro libito ſuæ voluntatis caſſavit*, &c. And there he alſo after ſpeaks of the Reſtauration of the ſaid *William* to the ſaid Archbiſhoprick: ſo that it ſeems by this Author that the ſaid *William* held the ſaid Archbiſhoprick upon his firſt

election, till after the deaths of Pope *Innocent* the Second, Pope *Celeſtine* the Second, and Pope *Lucius* the Second, *viz.* till about the year 1146. but was then ouſted by Pope *Eugenius*, and reſtored again by Pope *Anaſtaſius*, after the death of *Henry Murdac* about the year 1153.

Alſo *Gulielmus Neubricenſis*, who lived in the Raignes of King *Richard* the Firſt, and King *John*, *page* 368. *l.* 10. thus writes,

Venerabili Truſtino defuncto, Eboracenſis Eccleſiæ Pontificatum ſuſcepit Gulielmus ejusdem Eccleſiæ Theſaurarius, vir plane ſecundum carnem nobilis, & morum ingenua lenitate amabilis. Qui cum ad ſedem Apoſtolicam reſponſales idoneos propetendo ſolemniter pallio direxiſſet: emergentibus adverſariis & multa contra eum proponentibus negatum eſt. Juſſuſque ad eandem ſedem in propria perſona accedere & pro ſemetipſo [84] *tanquam ætatem habens allegare: cauſis tamen ingraveſcentibus atque invaleſcentibus adverſariis, piæ quoque memoriæ Papa Eugenio contra eum, ſive per veritatem, ſive per ſurreptionem implacabiliter irritato depoſitus eſt*, &c. [Page 84.]

So alſo *Gervaſius* a Benedictine Monk of *Canterbury*, who lived in the time of King *John*, *Col.* 1357. *l.* 52. in the year 1142. thus ſayes,

Rex autem Stephanus *dedit Archiepiſcopatum* Eboracenſis *eccleſiæ cuidem clerico nomine* Willielmo, *quibuſdam clericis ejuſdem Eccleſiæ conſentientibus, aliis vero ut audebant reclamantibus, unde factum eſt ut cum* Theodbaldus Cantuarienſis *archiepiſcopus ſic factæ non conſentiret electioni*, Henricus *frater Regis* Wintonienſis *epiſcopus apoſtolicæ ſedis legatus, præſumptuoſa ſemper magnanimitate famam colligens, prædictum electum apud* Wintoniam *conſecraret. Abiit itaque novus ſacratus* Eboracum, *& vix duobus annis ſedit in pace.*

Alſo, *Radulfus de Diceto*, who was Dean of *Pauls*, and lived in the time of [85] King *John*, *Col.* 508. *l.* 11. thus writes, *Thurſtino Eboracenſi archiepiſcopo ſucceſſit* Willielmus. [Page 85.]

Alſo, *Matt. Paris* (who lived in the time of King *Henry* the Third) in his *Greater Hiſtory* put out by Doctor *Watts*, *Page* 78. ſayes thus in the year 1139. Tunc *defuncto* Turſtano *Eboracenſi Archiepiſcopo*, Willielmus *ejuſdem Eccleſiæ Theſaurarius ſucceſſit.*

Alſo, *Simeon Dunelmenſis*, a Benedictine Monk, who lived in the Raign of King *Stephen*, and in the time of the ſaid *William*, *Col.* 79. *l.* 39. ſpeaking of the Archbiſhops of *York*, thus ſayes; *Poſt* Oſwaldum *iſti ſibi ordine ſucceſſerunt*, Aldulfus, Vulſtanus, Eelfricus, Kinſius, Aldredus, Thomas, Girardus, Thomas, Turſtinus, Willielmus, Henricus, Rogerus; There placing the aforeſaid *William* before *Henry Murdac.*

And *John Prior* of *Hagulſtald*, in his Continuation of the Hiſtory of the ſaid *Simeon*, *Col.* 268. *l.* 41. thus writes; *Anno* M.C. xlii. *Poſt mortem* Turſtini *archiepiſcopi clerici* Eboracenſes
[Page 86.] *ſecundum deſideria cordis ſui varia* [86] *& vaga ſententia circumacti fuerant toto anno ſuper electione facienda. Elegerant autem perſuadente legato* Henrico Wintoniæ *nepotem Regis* Stephani Henricum *de* Coilli. *Qui quia præfuit abbatiæ* Kadomenſi, *noluit dominus apoſtolicus eum præfici archiepiſcopatui niſi renunciaret priori honori. Menſe Januario iterum de electione tractantes, in perſonam* Willielmi *Theſaurarii plurimi conſenſerunt.* And preſently after, *l.* 60. further ſayes, *Perductum itaque electum ad* Lincolniam *rex libenter ſuſcepit, & in terris & poſſeſſionibus* Eboracenſibus *confirmavit.*

Now though a leſſer number of Authors might have ſerved to prove that there was a *William* Archbiſhop of *York*, living in the time both of *Randle de Gernoniis* and *Roger Clinton*, yet I thought fit to cite all theſe, to let the world ſee that it was nothing elſe, which made you that you could not find it to be ſo, but becauſe you would not find it to be ſo; For, I know, you have moſt (if not all) of the ſaid Authors, and if you would have made ſearch, you might eaſily have found what is here ſaid.

[Page 87.] [87] But beſides what is here alleadged, if you had but obſerved thoſe Deeds of *Richard Bacun* and *Randle Blundevil* which are

mentioned *Monaſticon Anglicanum, Part* 2. *Page* 267 & 268. and the Deeds of *Randle de Gernoniis* that are in your own *Hiſtorical Antiquities*, you would eaſily have known that the ſaid *Richard Bacun* did live in the time of the ſaid *Randle de Gernoniis;* For to the ſaid Deed of *Richard Bacun, Hugo Wac, Willielmus* Conſtabularius de *Donington, Thurſtanus Banaſtre, Willielmus Bacoun, Robertus Bacoun, Willielmus de Colevile, Richardus Pincerna, Willielmus de Binulle, Galfridus Diſpenſarius, Willielmus Capellanus* and *Johannes Capellanus* are Witneſſes: and to the ſaid Deed of *Randle Blundevil, Rogerus Conſtabularius Ceſtriæ, Rogerus de Montealto Seneſchallus Ceſtriæ, Simon de Kyma, Thomas Diſpenſarius, Simon de Thochet, Willielmus de Hardreſhulle, Hugo de Nevilla, Henricus de Longo Campo, Philippus de Horreby, Sampſon Prior de Trentham,* and *Thomas Clericus* are witneſſes.

Now as it would appear probable [88](if there were nothing elſe in the caſe) that this Deed of *Richard Bacun* was not made in the time of *Randle Blundevil*, becauſe there is not any one perſon a witneſs to the ſaid Deed of *Richard Bacun*, who was a witneſs to the ſaid Deed of *Randle Blundevil* (or to any other Deed of his, that I can find) So it certainly appears from your *Hiſtorical Antiquities*, that thoſe who are witneſſes to *Richard Bacuns* ſaid Deed, did live in the time of Earl *Randle de Gernoniis*, and not in the time of *Randle Blundevil;* For, as you may there ſee, *Page* 126 & 127. in the Deed made by *Henry* Duke of *Normandy*, to the ſaid *Randle de Gernoniis*, the aforeſaid *Hugh Wac*, and *Richard Pincerna* were then witneſſes on the behalf of the ſaid *Randle*, alſo *Page* 128. to one Deed of the ſaid *Randle*, the ſaid *William Colevile* was a witneſs, and to another of the ſaid *Randle*'s Deeds the ſaid *Willielmus Capellanus* and *Richardus Pincerna* were witneſſes, and *Page* 160 & 161. to another Deed of the ſaid *Randle de Gernoniis* the ſaid *Thurſtan Banaſter, Richard Pincerna* and *William* the *Chaplain* were witneſſes; [89]and ſo alſo the ſaid *Richard Pincerna, Thurſtanus Banaſter*, and *Willielmus Capellanus* were witneſſes to another Deed of the

[Page 88.]

[Page 89.]

ſaid *Randle de Gernoniis* concerning *Neither-Whitley*, mentioned by you, *Page* 387. Though you there run upon a miſtake, and ſay that *Randle Blundevil* made that Deed, which cannot be, Becauſe thoſe witneſſes (as appears before) did live in the time of *Randle de Gernoniis*, and not in the time of the ſaid *Randle Blundevil*, they being no witneſſes at any time to any Deed of *Randle Blundevils* that I can find, although he was Earl of *Cheſter* above fifty years, ſo that nothing can poſſibly be more clear than this is.

As to the word *aſperſed* which you fault me for uſing, I do not apprehend that it ſignifies **a malicious ſeeking to throw dirt in anothers face unjuſtly**; For, to aſperſe, properly ſignifies but to *beſprinkle*, with which, malice will ſeldom reſt ſatisfied: and I will do you this right, to declare that I believe it is not malice, but a deſire to divulge your ſuppoſed new Diſcovery, which occaſioned you thus to do.

[Page 90.] 90 That way of Arguing which you uſe in the 57 *Page* is very odd; For, Becauſe you ſuppoſe the *Reſpondent* will deny your *Minor*, you would have him give over anſwering, and turn *Opponent*, and ſo endeavour to diſprove what you ought to prove; But what you ſay, *Page* 58. that you have proved **Amicia to be a Baſtard, unleſs Hugh Cyveliok had a former Wife**, and alſo *Page* 59. *that if he had no other Wife but* Bertred, *and ſhe no Daughter to* Bertred, *then certainly if ſhe be a Daughter and ſo called, ſhe muſt needs be a Baſtard*, is undoubtedly true; For *Amicia* muſt needs be a *baſtard*, unleſs ſhe was *legitimate.*

You grant in your 59 *Page*, **That my proving** Amicia **to be called a daughter ſo long ſince, ſhe ought to be preſumed legitimate, till the contrary appear**; But why therefore do not you preſume her ſo to be? And though

you pretend there are many ſtrong reaſons to the contrary, yet I have ſhewed the invalidity of them all, and therefore what I have formerly [91] ſaid ſtands good, and is to the point, *viz.* That the proving that ſhe was not by *Bertred*, does not prove that ſhe was a baſtard, but onely proves that ſhe was either a baſtard, or by a former wife. [Page 91.]

And as to what you alleadg, *Page* 60. that, *though the Law allowes not this in pleadings, what hinders but Baſtardy may be proved by Hiſtory or Argumentation after the parties death? As, ſuppoſe in a Regiſter-Book you find ſuch a Baſtard Chriſtened one hundred yeares ago, may not you juſtly call that perſon a baſtard, whom you find ſo Regiſtred?* I do anſwer and ſay, That even in that caſe, though it be good proof, that there was then a Baſtard of that name, yet if in any Deed (or otherwayes) in the ſame Age you find one of that name, you are not to be too poſitive that that Man was that Baſtard, becauſe, there might be more perſons than one of the ſame Name, whoſe Fathers might alſo be of the ſame Name each with other; and though theſe miſtakes might eaſily be cleared by the party concerned whilſt he was alive, yet it may be dif-[92] ficult ſometimes to do it after he is dead: And that is (as I ſuppoſe) one reaſon why the Law gives no liberty to prove Baſtardy againſt any Man after his death. But the caſes of the children of *John* of *Gaunt* by *Katherine Swynford* are not like to this caſe, For you certainly know that they were born Baſtards, but afterwards legitimated; and I think, after their legitimation, they might have had the ſame remedies againſt any that did call them Baſtards, that perſons lawfully born might have had. [Page 92.]

Whereas I tell you out of Sir *Henry Spelman*, that in caſes of honor and profit (by the cuſtomes of *Normandy*) *appellatione filiorum non comprehenduntur baſtardi;* You anſwer and ſay; *that in other caſes, and formerly by the appellation of ſons, baſtards were comprehended*, and *that this makes directly againſt me;*

But how this makes againſt me, in what caſes ſoever baſtards were formerly comprehended by the appellation of Sons and Daughters, if they were not comprehended in caſes of *honour*
Page 93.] and *profit*, I cannot tell, ſeeing that *Amicia* is cal-[93]led a Daughter, and that in a caſe of ſo great *profit*, that you will needs have it to be her whole Portion.

And whereas you mention the next words of *Spelman*, viz. that *the ancient Northern people admitted baſtards to ſucceed in their inheritance; and that* William *the Conquerour was not aſhamed of that title, who began his Letter to* Alan *Earl of* Little-Britaine *as he did many others, Ego* Willielmus *cognomento Baſtardus.*

I do not know how you can apply thoſe expreſſions to the caſe in hand, and if you could, they would make againſt you; For, when Baſtard children were ſo much eſteemed, as to be admitted to ſucceed in the inheritance, then certainly illegitimate Daughters would have great Portions as well as thoſe that were legitimate, And why ſhould not *Amicia*, if ſhe was a Baſtard, be ſo called, as well as *Paganus* was? (who, as you ſay, was the Son of *Hugh Cyveliok*) Or why ſhould *Hugh Cyveliok* himſelf, be more aſhamed to call her ſo, than *William* the *Conqueror* was to ſtile himſelf a Baſtard?

[Page 94.] [94]What elſe you have ſaid, *Page* 61, 62 & 63. hath been ſaid over and over again by you, and hath formerly received a full Anſwer.

In the 64 & 65 *Pages* you recite and endeavour to fortifie an Argument of mine, which I brought not as a good Argument, but compared it to one of yours, to ſhew the invalidity thereof; neither did I at all doubt, but that *William*, *Randle* and *Wydo* (Sons of the aforeſaid *Roger Mainwaring*) were all legitimate, it being good proof thereof, that in ſo antient a Record, they are all three called *Sons* of the ſaid *Roger;* But I ſhewed you by

the Rule by which you went *viz.* that none ſhould be believed lawfull, unleſs we could directly and in *terminis* prove their Fathers to be married, that the ſaid *William*, *Randle*, and *Wido*, and moſt perſons that lived in the Firſt and Second Centuries might be concluded to be Baſtards; And though you tell me, *that I here argue well* (which muſt needs be, becauſe this Argument of mine is ſo like to yours) *and that you would ſay to* [95] *my Minor, that* Roger *had a Wife, though we yet know not who ſhe was; and that this appears certainly, becauſe the Lands deſcended from heir to heir*, and that you tell me, how you would *frame your affirmative part more formally?* Yet in ſtead of trying whether you could in *terminis* prove (which by this your Rule you ought to do) whether *William* who was the eldeſt of the three Sons of the ſaid *Roger*, was his lawful Son, or but a baſtard, you beg what you ſhould prove, and take it for granted that he was the Son and Heir, and ſay, *that if the Son and Heir of* Roger *ſucceeded by deſcent in his Fathers Inheritance, then* Roger *had a Wife;* whereas if *William* was the Son and Heir of *Roger*, the ſaid *Roger* his Father muſt needs have a Wife, whetherſoever *William* ſucceeded in the Inheritance by deſcent, or was diſinherited; For, none but a lawful Son, can be a Son and Heir; and the ſame queſtion you beg, when you pretend (*p.* 65.) to prove the ſequel of your Major. For in that Argument you ſay, **Ergo, if the Son and Heir of** Roger **ſucceeded by deſcent in the Inheri-**[96]**tance, then** Roger **muſt needs have a Wife, and nothing appears here of a ſpecial ſettlement**; But beſides your begging of the Queſtion, the only reaſon which you bring to prove the ſaid *William* did ſucceed by deſcent (and by conſequence that his Father was Marryed) is, **becauſe, nothing appears here of a ſpecial ſettlement**; But this is not a proving certainly and in *terminis* that the ſaid *Roger* had a Wife, for though no ſpecial ſettlement doth appear, yet, if we muſt be tyed to this your way of proving, *William* might poſſibly be a Baſtard, and might come in by ſpecial ſet-

[Page 95.] [Page 96.]

tlement, though the ſaid ſettlement be now loſt; So that this retorted Argument is but weakly anſwered.

What you ſay, *Page* 66, 67, 68 & 69, is but what you have formerly ſaid, and I have abundantly anſwered, and your alleadging **that** Amicia **being of the firſt venter, is therefore more worthy than thoſe of the ſecond**, is ſufficiently confuted by thoſe words of mine, which you repeat in your 70 *Page;*

[Page 97.] For though it be true that if a [97] Man die, and leave only Daughters, which are by ſeveral Wives, that thoſe of the firſt venter, ſhall be more worthy than thoſe of the ſecond, yet if a Brother dye (as in this caſe) and have no iſſue of his own, nor any Brother, but only leave Siſters, which were by two ſeveral venters, if that Brother was of the ſecond venter, (as *Randle Blundevile* was) then thoſe Siſters that were of the ſecond venter, ſhall be preferred before thoſe of the firſt, Becauſe, thoſe were of the whole blood to their Brother, whereas the Siſters by the firſt venter were but of the half blood.

What you alleadge, *Page* 71, 72 & 73, doth not prove that Earl *Hugh*'s Grant, was a Releaſe of the Service of one Knights-Fee; But that, and all the reſt in thoſe *Pages* (as you truly ſay) being nothing to the argument in hand, I will not trouble my ſelf or the Reader therewith: Only let me obſerve, that there is no probability at all, but that Sir *Raph Mainwaring* had a farr greater Portion with his Wife than thoſe Services; For, the

[Page 98.] having [98] the ſervice of three Knights-Fees, doing the ſervice of two Knights-fees, was in effect the having the ſervice but of one Knights-Fee, and as I told you in my former Book, was not a Portion ſuitable to the Eſtate of a very mean Gentleman; ſo that it was certainly a free-gift of the ſaid *Earl*, after the ſaid Marriage was paſt and conſummated; And that Grant to him is ſo far from proving, that he had no greater Portion, that you your ſelf, when you are told, 'tis like he had a great deal more, do confeſs (*Page* 71.) *it may be ſo, What then?* And if it be ſo,

that he had a greater Portion, and it doth not appear how much that Portion was, you can raiſe no Argument from thence, ſo that this your ſecond Reaſon is very invalid.

Alſo it is very probable that the Lordſhip of *Henbury* in *Cheſhire* might be part of the Portion of the ſaid *Amicia;* For as appears in your *Hiſtorical Antiquities, Page* 107. *Henbury* was one of thoſe Towns which *Hugh Lupus* held in Demaine, And I do not find that any *Mainwaring* was poſſeſſed thereof, before Sir *Raph Mainwaring,* [99]who was Husband to the ſaid *Amicia,* [Page 99.] neither have I ever yet ſeen or heard of any Record or Deed which ſhews how *Henbury* firſt came to the *Mainwarings.*

And whereas you tell me, (*Page* 74, when you ſpeak of your Third and laſt Reaſon) that I might have done well to have anſwered your firſt Reaſon better; I ſhall appeale to the Reader, whether your Third Reaſon, which you your ſelf confeſs not to be evincing, be not as ſtrong as your firſt, and upon the matter the ſame with it; as alſo, whether I have not given both your firſt and third Reaſons a very full anſwer, in the 62, 63, 66 & 67 *Pages* of my former Book, and therefore it will not be taken off without better reaſon given by you, then your bare denying it to be a ſubſtantial Anſwer; So that all your three Reaſons againſt *Amicia,* are of no weight at all.

Alſo, what I have there ſaid will give full ſatisfaction to the Queſtion you did pleaſe to ask, *viz. Whether I* [100]*find that the* [Page 100.] *Hiſtorians have left out any of Earl* Hughes *legitimate Children, except this whom I ſuppoſe to be legitimate?* For, thoſe Hiſtorians only taking upon them to Record who were heires to *Randle Blundevil;* If *Hugh Cyveliok* had had never ſo many Daughters by his former Wife, they would never have taken notice of any of them.

And whereas you obſerve, *Page* 75. How I ſay, that Mr. *Cambden* hath mentioned *Amicia,* though not among the Co-

heires, yet without the brand of a Baſtard, and do reply, *that I know well that he is but of late ſtanding, and not an Hiſtorian contemporary with* Amicia, *and that you and I do alſo mention her.* It is very ſtrange that you ſhould thus ſay, whereas the only reaſon why I did ſpeak of Mr. *Cambden*, was, becauſe, you had ſaid, *That he was one of thoſe Hiſtorians who had taken no notice of the ſaid* Amicia, and I onely named him to ſhew you your miſtake therein.

The reſt which you ſay in the 75 & 76 *Pages*, is but what
[Page 101.] you have [101] formerly ſaid, and hath received an anſwer before.

In your 77, 78 & 79 *Pages*, you are alſo ſo far from anſwering that Argument of mine, which is contained between the 69 & 75 *Pages* of my former Book, that that which you pretend to be an Anſwer (if rightly underſtood) is the very Argument which I there frame againſt you; For, though what you ſay, *Page* 78. be true, that ſometimes the *Juſtice* is put after the *Conſtable* and *Dapifer*, and ſometimes before the *Conſtable* and *Dapifer*, yet all the Juſtices of *Cheſter*, except Sir *Ralph Mainwaring*, are named in the Charts of the Earles of *Cheſter*, after the *Conſtable* and *Dapifer*, and are alſo named after the *Conſtable* and *Dapifer*, when they were witneſſes to any Deeds; But it is only in the time of the ſaid Sir *Ralph Mainwaring*, when the *Juſtice* is named before the *Conſtable* and *Dapifer*, in the Charts of the ſaid Earles, and it is only he who is named as a witneſs, and
[Page 102.] that frequently before the *Conſtable* and [102] *Dapifer*, as I have proved by ſeveral Deeds, which I then mentioned both out of your former Book, and elſewhere, and doth alſo further appear by another Deed in your *Hiſtorical Antiquities*, *Page* 205. where the ſaid Sir *Ralph Mainwaring* is alſo named as a Witneſs before the then *Dapifer*, *Ralph de Montealto;* And this reſpect was ſhewed to the ſaid Sir *Ralph Mainwaring*, although, as you may ſee in your ſaid Book, *Page* 160 & 161. that the Conſtable by Charter was to go next the *Earl*, and had his office in Fee,

and that the Steward was to go next after the Conſtable, and had his Office alſo in Fee; But when *Philip Orreby*, who did ſucceed the ſaid Sir *Ralph Mainwaring*, was Juſtice of *Cheſter*, then, according to the old uſual way, as appeares in the 162. *Page* of your Firſt Book, the Conſtable and Dapifer were again named in the Earles Chart before the Juſtice of *Cheſter*, and alſo as you may ſee at the bottom of the 144 *Page*, and the top of the 145 *Page* of your ſaid Book, the ſaid Conſtable was [103] named as a Witneſs before *Philip de Orreby*, though then Juſtice of *Cheſter;* And I believe you cannot ſhew any Chart of any of the Earles of *Cheſter*, in which any other Juſtice of *Cheſter* had the like preeminence; neither do I think you can ſhew any Deeds in which any other Juſtice is named as a Witneſs before the Conſtable or Dapifer, and if any ſuch ſingle precedent can perchance be found, I am confident it will prove to be a Deed wherein the ſaid *Philip de Orreby* is named as a Witneſs, and was occaſioned by the ſimplicity of the Clark, who did write the ſaid Deed, who finding Sir *Ralph Mainwaring* Juſtice of *Cheſter* (the immediate Predeceſſor of the ſaid *Philip de Orreby*) to be written as a Witneſs before the Conſtable and Dapifer, might thereupon think that *Philip de Orreby* ſhould alſo be ſo placed; But it appeares by the aforeſaid proofes, and by ſeveral other Deeds, that it was not allowed to the ſaid *Philip;* And although you truly object, in the 78 *Page*, *How great the uncertainty of ſubſcription of* [104] *Witneſſes was in old Deeds, ſometimes putting one before another in one Deed, and after putting the ſame perſon after the other in another Deed;* yet, that will be nothing in this caſe; for, you your ſelf confeſs, *Page* 160 & 161. of your *Hiſtorical Antiquities;* notwithſtanding the *uncertainty of ſubſcription of Witneſſes, that after certain Offices were annexed to certain Barons, that the matter was without controverſie* (as to the Conſtable and Dapifer) *and that the Conſtable of* Cheſhire *in Fee carried it clear by his Office*, which was *annexed to his Barony, and that the Steward* was the *next after him;* And therefore this preeminence being thus given to the ſaid Sir *Ralph*, and to

[Page 103.]

[Page 104.]

him onely; and he alſo, ſo farr as I have found, being ever named before all the other Barons of *Cheſhire*, after he had Married the ſaid *Amicia*, as well when he had parted with his Office of Juſtice, as before; I think I may ſtill ſay, it will be difficult to give a Reaſon thereof, if he did not Marry a *lawful* daughter of the aforeſaid *Earl*.

[Page 105.] 105 I have now done, but cannot concurr with you, that the Honour of our Grandmother (the Mother of *Amicia*) is a *trivial thing;* However, I am glad to Read, That you take your leave for ever of this Controverſie, becauſe I hope all occaſion of future Conteſt will be thereby taken away betwixt You and Him who is,

S I R,

Baddeley, Auguſt 5 1673.

Your Affectionate Kinſman and very humble Servant,

Thomas Mainwaring.

F I N I S.

ADDENDA,

OR

Some things to be added in my Anſwer to Sir *Thomas Manwaring's Book*: to be placed immediatly after *Page* 90 [of the *Anſwer*, ſee pages 49 to 94 *ante*].

[*By Sir* PETER LEYCESTER.]

[1]*ADDENDA*, [Page 1.]

OR

Some things to be added in my Anſwer to Sir *Thomas Manwaring's Book:* to be placed immediatly after *Page* 90 [of the *Anſwer*, ſee pages 49 to 94 *ante*].

Page 20. Line 7. *it ſhould there have followed thus* ——

WOuld not the Argument be as good on the other ſide? Many Judicious men are of Opinion, That *Amice* was a Baſtard; *Ergo* ſhe was ſo: And I aſſure you I have had diſcourſe with many Judicious men who are of opinion, that *Amice* was a Baſtard: in theſe Caſes *&c.* as followeth in the Book.

[2]*Pag.* 66. *after line* 20. *ſhould have followed thus* —— [Page 2.]

And what Reaſon can be given by any Lawyer, or other Perſon, for that Opinion, That Lands in thoſe elder Ages could not paſs *in Libero Marritagio* with Baſtards, whiles there be many plain Precedents of thoſe Ages which do manifeſt the contrary? For beſides that precedent of *Geva* mentioned before, both in this and my former Book, I ſhall here give you two or three precedents more: whereby it doth certainly appear, that *Lewellin*

Prince of *North-Wales* had Lands given unto him in *Libero Marritagio* with *Joanna* baſe daughter of King *John.*

That *Lewellin* married *Joane* baſe daughter of King *John, Anno Dom.* 1206, See my Book of Antiquities, *pag.* 47. She is acknowledged and called baſe daughter of King *John* by theſe Heralds and Hiſtorians following—*Vincent* upon *Brook,* p. 204.

[Page 3.] *Liber Barlings* Fol. 22. *b. Speed's* Hiſto-[3]ry, *p.* 518: *Stow's Annals* augmented by *Howes.* p. 167. a. *Poly-Chronicon,* Tranſlated into *Engliſh* by *Treviſa,* l. 7. *ca.* 33.

1. That King *John* gave Lands with her *in Libero Marritagio,* See *Vincent* in the place cited: where his words are theſe—*Agatha* [Daughter of the Second *William de Ferrars* Earle of *Derby*] was Parramour to King *John,* on whom he begot *Joane* a baſe Daughter, married to *Lewellin* Prince of *North-Wales, Anno,* 1206, with whom her Father gave in Marriage the Caſtle and Lordſhip of *Elleſmere.* And there he citeth *Lib. Barlings Fol.* 22. *b.* With whom alſo agreeth *Poly-chronicon. lib.* 7. *ca.* 33. and *Knighton* the Monk of *Leiceſter* in like manner, *p.* 2417. I think this is pretty clear.

2. See alſo another Precedent in my Book of Antiquities *p.* 152. where *Lewellin* Prince of *North-Wales* gives by his Deed the Mannor of *Budeford* in *Warwick-ſhire,* and the Mannor of *Suttehel* in *Worceſter-ſhire* unto *John* the *Scot* (afterwards Earl

[Page 4.] of [4]*Cheſter*) with *Helene* his Daughter *in Libero Maritagio cum omnibus pertinentiis, ſicut Dominus Johannes Rex, ea illi dedit in Libero Marritagio:* what can be clearer? if any object, that it is not ſaid here *cum Johanna filia ſua:* I ſay, that is but a meer Cavil: for it muſt by common intendment be neceſſarily ſo underſtood, and is implyed here as ſtrongly as if the words *cum Johanna filia ſua* had been added: becauſe he never Married any other Daughter of King *John,* ſave only the ſaid *Joane:* And he that can find out, That the ſaid *Lewellyn* ever married any other Daughter of King *John* beſides, *aureos Perſarum montes mereatur.*

3. It appears Thirdly, by the Authority of the ſame *Vincent,* in

the place before alledged, that this *Joane* afterwards married *Robert de Audley*, with whom *Henry* the Third gave Lands in *Shepey* alſo: but the words of *Vincent* are theſe — And after his death ſhe was re-marryed to *Robert de Audley*, and had Lands in *Shepey*. 5*given likewiſe with her by King *Henry* the Third, as ſhall be more largely diſcovered in the Life of King *John*.

* *Claus.* An. 14. *Hen.* 3. [Page 5.]

Where I think *Vincent* is miſtaken, in ſaying, it was after the death of *Lewellyn:* for *Lewellyn* dyed not till *Anno Chriſti* 1240, *tertio Idus Aprilis, ſcilicet die Sancti Guthlaci*: So *Mat. Paris*, pag. 525. of the Edition put out by *Watts:* but I rather believe ſhe was Divorced from *Lewellyn;* for *Anno* 1230, *Willielmus de Braus vir nobilis & Potens, a Leolino Principe Walliæ Patibulo ſuſpenſus eſt menſe Aprilis, cum Uxore ſua (ſcilicet dicti Leolini) ut dicebatur, in Adulterio deprehenſus Mat. Paris.* pag. 365. Alſo I find, that *Anno Domini* 1228, 13. *Hen.* 3. *Leolinus Princeps Walliæ rebellare cæpit:* — *Tandem poſt concurſos varios & diſcrimina multa, per quoddam marritagium cum Rege Concordatus eſt, & in pace dimiſſus.* Knighton, *pag.* 2439. So that it ſeemeth to me, that *Joane* was Divorced from *Lewellyn.*

But it is clear by the Record vou-6ched by *Vincent, Claus.* Anno 14. *Hen.* 3. That ſhe was then remarryed to *Robert de Audley*, and had Lands given with her in Marriage by King *Henry* the Third: and ſhe dyed *anno Dom.* 1237. ſaith the *Welſh* Hiſtory, put out by *Powel.* [Page 6.]

So that we may take notice by the way, that till 14. *Hen.* 3. She was *Lewellyn's* wife; and that King *John* was dead long before: Wherefore King *John* could not grant any Lands *in Libero Marritagio* to *Lewellyn* with any other Woman whiles ſhe was his Wife, (and ſhe was not Divorced till long after King *John's* death) unleſs you will ſuppoſe *Lewellyn* to have had two Wives at one time, and alſo ſuppoſe the King to be ayding and conſenting in the wronging of his Daughter: both which is abſurd to imagine.

Wherefore Lands paſſed in *Libero Marritagio* in thoſe elder

Ages, as well with Baſtard-daughters as Legitimate Daughters, frequently and uſually: ὅπερ ἔδει δεῖξαι, *quod demonſtraſſe oportuit.*

[Page 7.] [7]And many more precedents might without doubt be found in like Caſe, if any Perſon would diligently ſet himſelf to ſeek after them among ancient Records and Evidences.

Again, the words of *Glanvil* Chief Juſtice of *England* (who is the firſt that reduced our Law into Writing ſince the *Norman-Conqueſt*, and lived in the very Age with *Amicia*) are clear in this point, That Lands might then be given by any Gentleman with his Daughter in Marriage, or with any other Woman whomſoever, *Lib. 7. cap.* 1. without any exception: which words you have endeavoured to reſtrain, but cannot juſtly do it.

So then the opinion of ſome Lawyers in our days, not conſidering what was the Law and Practiſe herein in thoſe more ancient Ages, and whoſe opinions you ſo often urge againſt me over and over again, are now clearly blown away by plain Demonſtration.

And the Terme of Baſtard — *&c.* and ſo as followeth there in my Book.

[Page 8.] [8]Here I had ended my *Addenda*, but that I find you have now publiſhed a Reply to my Anſwer; wherein are ſo many new Accuſations, abſolute untruths, and groſs Abſurdities charged upon me (which indeed fall clearly on your ſelf) that I am forced now to vindicate my ſelf, leaſt the World may think me guilty of them, ſhould I paſs by them, in ſilence: And when inſtead of modeſt and clear Anſwers to the very point or hinge of the Controverſie, you burſt out into extravagant Expreſſions in things upon the By, it gives me occaſion to imagine, that you think your Cauſe is declining: And howbeit I am tyed up by my promiſe to write no more Touching *Amicia* (your Confidence of which may perhaps be the Ground of your impoſing on the eaſie Readers thoſe great untruths and abſurdities, as ſaid or done by me) I ſhall both be juſt to my Word, and yet vindicate my ſelf from thoſe groſs things you charge upon me in theſe Particulars following.

[9]*Page*, 1, 2. In the firſt place, in the front of your Reply *Page*. 1, & 2. you ſay, that you doubt not but thoſe of our County that are underſtanding Perſons, will as eaſily diſcern from ſome of my Omiſſions (though you forbear in Publick to take notice of them) that it was ſomething beſides my great love to Truth (pretended by me, alledging the ſaying of *Ariſtotle*) which occaſioned me thus to aſperſe my deceaſed Grandmother. [Page 9.]

Whereunto I ſay, That I am ſorry you begin your Reply with an untruth: what Omiſſions of mine, the underſtanding Perſons of our County do, or may diſcern, I know not: but what thoſe Omiſſions be, and what that ſomething was beſides my love of Truth (which, you ſay, I do but pretend unto) you might have done well to have ſhewed: I am ſure there was no malice in the Caſe: and of that you your ſelf do acquit me, *Page* 89. But you ſay there, it was my deſire to divulge my ſuppoſed new Diſcovery: But why my deſire [10]to divulge this more then other things? And yet you tell me, *Pag.* 2. that you have in your firſt Book (and ſo you hope you ſhall do in this) endeavoured to avoid all expreſſions which you conceive might be offenſive: how theſe things agree, and how you keep your Word, let others judge. [Page 10.]

Alſo *Page* 5. You acknowledge you have not found, That in the time of *Ralph Manwaring* there was any Judge of *Cheſter* but the ſaid *Ralph:* yet it being poſſible that there might be more then one at a time, you did therefore call him *Chief* Juſtice.

Had it not (*think you*) been more Ingeniouſly ſaid by you, that indeed you did not think on it, or conſider it, when you call him ſo? Since you do very well know, that there was no other Judge of *Cheſter* at that time: and yet I ſhall be loath to ſay it was your vain Glory: but charitably impute it rather to your forgetfulneſs: This only by the way.

Page 9. Again you ſay, That I fancy [11]*Geffery Dutton* (who made the Deed of *Nether Tabley* to *Margaret his Daughter*) was [Page 11.]

Witneſs to his own Deed: and that I would needs have *Domino Galfrido de Dutton*, a Witneſs ſubſcribed to the Deed of *Nether Tabley*, to be the ſame *Geffery Dutton* who was party to the ſaid Deed: whereas (ſay you) it was not he, but his Father.

Indeed I never ſaid he was witneſs to his own Deed at any time: you put down my words, and then miſtake them: I produced that example of the Deed of *Nether Tabley*, to ſhew that there the ſaid *Geffery Dutton*, Party to that Deed, calls himſelf only *Geffery Dutton*, and that he was no Knight: For otherwiſe he would have called himſelf by his Title; as *Ego Galfridus de Dutton miles*, or *Ego Dominus Galfridus de Dutton dedi*, &c. which few men will omit in their own Deeds, if they have really the honour of Knighthood: and yet I had ſeen the ſame man, in Subſcriptions of Witneſſes put down by the writer of the
[Page 12.] Deed, ſome-[12]times with the Title of *Domino* prefixed, as *Domino Galfrido Dutton:* not to his own Deeds, but to the Deeds of others: and that much oftner Subſcribed too without the word *Domino* prefixed, then with it. And this I do affirm: and deſire the Reader to obſerve, it is your Groſs miſtake of me, not my miſtake at all.

And when you ſay, that *Domino Galfrido de Dutton* Witneſs to the other *Geffery Dutton's* Deed of *Nether Tabley*, was his Father: I ſay, that is your groſs miſtake: for it was *Geffery Dutton* of *Chedle:* and the other witneſs there *Domino Thoma de Dutton*, was *Dutton* of *Dutton:* And therefore that I may inform you what I ſee you do not yet know: There were two *Geffery Duttons* of *Budworth*, Father and Son, Anceſtors to *Warburton* of *Arley:* and two *Geffery Duttons* of *Chedle*, Father and Son: all which lived in the time of *Henry* the Third, and were much contemporary, the Fathers about the beginning of *Henry* the Third, the Sons about
[Page 13.] [13]the latter end of *Henry* the Third's Raign: the laſt time that I meet with *Geffery Dutton* of Great *Budworth* Son of *Adam Dutton* is *anno primo poſt obitum* Johannis Scotici *comitis Ceſtriæ:* and ſeems to dye about the middle of *Henry* the Third: now

See my Book of Antiq. *p.* 226.

the Deed of *Nether Tabbly* was made about the very end of *Henry* the Third, or the beginning of *Edward* the Firſt; after the Death of *Jeffery* Son of *Adam:* elſe how could this *Geffery* the Son grant away any Lands, till he was poſſeſt of them? whoſe Father *Geffery* had them whiles he lived: and all theſe ſeveral *Geffery Duttons* (if I miſtake not) I have ſeen ſometimes ſubſcribed with *Domino* prefixed: but not any (that I do remember) writing himſelf thus — *Ego Dominus Galfridus Dutton dedi* — &c. and theſe things (if it were material) I could prove.

Again, you call *Margaret* Daughter and Heir of the ſaid *Geffery Dutton, page* 7. which is another groſs miſtake of yours: ſhe was not his Heir: Sir *Peter Dutton* was Son and Heir of
[14]the ſaid *Geffery:* and ſo you ſee all theſe untruths and groſs [Page 14.]
miſtakes are your own, which you charge upon me. And you ſay, *page* 7, 8. a man would think I were well acquainted with all the Deeds of the ſaid *Jeffery Dutton* in my cuſtody, and yet I have run into groſs Errors concerning the ſaid *Geffery:* alſo *pag.* 11. you ſay, though ſuch devices as theſe I may impoſe upon ſilly Readers, yet certainly no intelligent Perſon will believe what I ſay concerning the ſame. And now let the Reader ſee who is miſtaken, you or I.

Page 11. And where you tell me, That in my Anſwer, *pag.* 5. 6. I ſaid *Dominus* in old Deeds was never uſed by the Party himſelf, but when it was joyned with another word; as *Ego Robertus Dominus de Moaldiæ dedi* — &c. I confeſs my expreſſion was too ſhort: for you muſt underſtand me, except where it is meant of a Knight: for there a little after I ſpoke of Knights, who uſually ſtile themſelves thus — *Ego Dominus* A. B. *dedi* — &c. or *Ego Dominus* A. B. *miles* [15]*dedi* — &c. So that I ſhould [Page 15.]
have ſaid, the word *Dominus* was ſometimes uſed for a Lord of a Mannor: and then it is always joyned with another word: as *Ego Robertus Dominus Moaldiæ:* and in this Notion it is always to be expounded by our *Engliſh* word [Lord]: as *Robert* Lord of *Mould, William* Lord of *Pever,* and the like: and ſo it is uſed even at this day.

But the word (*Domino*) as it is uſed and prefixed to names in old Deeds among the Witneſſes Subſcribed under King *John* and *Henry* the Third, it is ſometimes underſtood of Knights, ſometimes of Clergymen, and ſometimes of the better ſort of Gentlemen of Quality, ſo as it is not eaſie to diſtinguiſh them: nor is it a ſure Rule to be underſtood of a Knight in thoſe Ages, unleſs the word *Milite* do follow: neither were Knights ſo very frequent, till towards the end of *Henry* the Third's Reign: For *Matthew Paris* tells us, that *Anno Dom.* 1256, 40 *Hen.* 3. ſuch
[Page 16.] as had fifteen pounds yearly in [16]Land, were called to be made Knights or to be fined.

Page 11. So alſo when you ask me, why I called Sir *Thomas Manwaring* of *Warmicham* Knight upon the like proof (meaning by *Domino* prefixed to his name in Subſcriptions) and alſo in my Anſwer call Sir *Ralph Manwaring*, Sir *Roger Manwaring*, and Sir *William Manwaring* Knights upon the like proof, if it be not certainly underſtood of a Knight, but where it is meant for a Clergy-man?

Sir *Thomas Manwaring* is mentioned among others with the word *Militibus* added, 2. *Edw.* 1. Lib. *A.* Fol. 157. h. in a Fine.

But I did not always in my firſt Book heed theſe ſmall things ſo accurately: for poſſibly I may ſometimes have called ſome ſo, who are not: and in other places may perhaps have omitted that Title to ſome who were Knights: but ſince you put me upon it, and make it a matter of buſineſs, I ſhall give you my Opinion: For (as I have before declared) it is no ſure Rule of a
[Page 17.] Knight [17]always but when the word *Milite* is added; unleſs alſo by ſome other proof we find the ſame Perſon writing himſelf ſo in his own Deed: as you ſee by the Deeds you produce — *Ego Dominus Thomas Manwaring dedi* — &c. which Title he would not give to himſelf unleſs he were *revera* a Knight: But that the firſt *William Manwaring* of *Pever* was a Knight, (howbeit I find there was a *Dominus Willielmus Manwaring* Parſon of *Wernith* ſomewhat contemporary with him, which uſually have the word *Parſona* added, but not always neither) or that *Roger* Father

of the firſt *William Manwaring* of *Pever*, were either of them Knights, I have not ſeen any preſumption for it by like proof: nor do I ſee reaſon enough to perſwade me, that *Ralph Manwaring* Judge of *Cheſter* was a Knight: for that in his own Deeds he calls himſelf only—*Ralph Manwaring* Judge of *Cheſter:* neither have I ſeen him ſubſcribed at any [18]time with *milite* added: and as oft or ofter without the word *Domino* prefixed, as with it. So that if you have any ſuch Deed to illuſtrate it, you might do well to produce it: And for my giving them all the Title of Knight, I did it out of Civility, knowing alſo your deſires therein: for I tell you in my Book before *Page* 8, that I had rather give to any, eſpecially to your Family, more then is due, then leſs. [Page 18.]

Page 30. Again, you faſten upon me another untruth, where you tell me, That I have ſeen the Opinion of a Judge under his hand, together with Reaſons for the ſame, touching *Amicia*.

Sure my memory is not ſo bad, but I could remember ſomething of it; or his name, which I proteſt I do not: or if I ever ſaw it, I never peruſed it: for I otherwiſe ſhould in my Book of Antiquities have taken notice of thoſe Reaſons.

[19]*Page* 31. Alſo of your Reply, you ſay you know that thoſe two *Heralds*, who at *Cheſter* did declare their Judgments againſt me, did then hear all the Reaſons that I could then alledge. [Page 19.]

It is true, That two *Heralds* at *Cheſter* did long time ago declare their Opinions touching *Amicia:* and I remember well, that I told them, I was of a contrary Opinion: but that I gave them then all the Reaſons I could alledge againſt their Opinion, I utterly deny: nor was it poſſible to have alledged the Tenth part of what I could have done) in ſo ſhort ſpace, as while we were together: ſome Reaſons (I deny not) but I might give againſt their Opinion, but I am ſure I had no ſatisfactory Anſwer to what I did then alledge: But what is this to the purpoſe? There will be diverſities of Opinions in moſt things to the end of the World: *Tot Homines, Tot Sententiæ:* but which is the right [20]Opinion, that is the point: I can aſſure you, I heard a Lawyer [Page 20.]

of very good note, and a good Antiquary, who had ſeen what hath been written in this Matter both by you and me, declare his Opinion in publick (without any asking by me at all) That Lands in thoſe elder Ages did paſs *in Libero Marritagio* all one with Baſtards as no Baſtards: and further I will adde, that I believe the ſundry precedents I have given in the beginning of this *Addenda*, will ſatisfie any judicious and indifferent Perſon how the Law was then taken in thoſe elder Ages.

I have one other thing and no more: *Page* 86. You tell me (ſpeaking of *William* Arch-biſhop of *York*, and *Roger Clinton* Biſhop of *Cheſter*, that they were both Biſhops together about *Anno Dom.* 1142) that there was nothing made me I could not find it to be ſo, but becauſe I would not find it to be ſo.

[Page 21.] [21]Whereunto I ſay, that you have muſtered up a great number of Authors from *pag.* 70. of your Reply, to *pag.* 89. by which it is plain, that *William* was Elected Archbiſhop of *York* about 1142: but none of all theſe do ſay, that ever he had the Pall: For that was denyed by the *Pope*, and by conſequence he was no Archbiſhop, nor ever confirmed therein: for by reaſon of the great Oppoſition made by the Diſſenters from his Election, *William* went to *Rome* in hope to have procured the Pall, and to have been Confirmed; but it would not be: where in the Court of *Rome*, after that his Cauſe had been there depending above two years, it was at laſt by *Pope Eugenius* adjudged againſt him, and *Murdac* had it. Nor is *William* at all put down among the Catalogue of the Biſhops, till after the Death of *Murdac*, *An.* 1153. either by *Godwin*, *Iſaacſon*, or Doctor *Heylin*, in their

[Page 22.] Catalogues. [22]Indeed *Simeon Dunelmenſis* puts him before *Murdac;* but that Catalogue is miſtaken either in the Copy, or (which I rather think) in the Writer: for in that Roll of his, *Roger* is placed next after *Henry Murdac*, which is not true: for it is apparent by all, that *William* ſucceeded *Henry* legally, *An.* 1153. and then again *Simeon Dunelmenſis* in that Roll puts him before *Henry*, when in truth he was no Archbiſhop: So that it ſeemeth *William* is there miſ-writ above *Henry*, which ſhould

have been put next after him. So that indeed there was no Arch-biſhop of *York* after *Turſtin* legally, till about the year 1145. when it was adjudged for *Henry Murdac;* the other Election of *William* being declared Null and void. But ſuppoſe he were for ſome ſhort ſpace eſteemed by the People as Arch-biſhop, yet methinks this is no good ground to call him Arch-biſhop in any Deed, or Record: becauſe he was no [23]Arch-biſhop at that time: and therefore ſeems to be *Vitium Scriptoris in Bacon's* Deed, if it were ſo intended: nor was it proper to direct that Deed to any Archbiſhop of *York*, but *Canterbury:* for *Cheſter* was then within the Province of *Canterbury*, and not of *York:* and therefore I cannot yet but think, that *Bacon*'s Deed therein is miſtaken in the Letters: and it were good that the Original were compared for ſatisfaction: which I was promiſed, but cannot yet get it. [Page 23.]

Nor doth *Richard Bacon* aforeſaid ſeem to live ſo ſoon, as to be Contemporary with *Randolph de Gernoniis*, but rather with *Randolph Blundevil.* For your Reaſons *Page* 87, 88, 89. that he was Contemporary with *Randolph de Gernoniis*, are of little moment: your firſt Reaſon is, becauſe you find *Hugh Wac*' and *Richard Pincerna* (two of his Witneſſes to *Bacon*'s Deed) were alſo Witneſſes to a [24]Deed made *Anno* 1152, which falls in the latter end of the Life of *Randolph de Gernoniis: Ergo Richard Bacon* lived before the Age of *Randolph Blundevil.* I pray, ſee what a mighty Reaſon this is: as though ſome men may not live to be Witneſſes Forty or Fifty years together, and more; and ſo may be Witneſſes both to ſome Deeds made in the time of *Randolph de Gernoniis*, and alſo to *Richard Bacon's* Deed, ſuppoſing it to be made in the time of *Randolph Blundevil:* Since there is not above Twenty nine years between the Deed before mentioned, and the time of *Randolph Blundevil's* being Earl of *Cheſter:* So that thoſe men might be Witneſſes to *Bacon's* Deed alſo, yea though it were made under *Richard* the Firſt, or latter; beſides the miſtakes which may happen by mens names, when many Fathers and Sons oftentimes bear the ſame [Page 24.]

[Page 25.] Names. And for your other Reaſon, that none [25]of thoſe Witneſſes to *Bacon's* Deed, was Witneſs to the ſaid Deed of *Randolph Blundevil,* nor to any other of his Deeds that you can find; this hath ſo little Reaſon in it that it needs no Anſwer: as though two Deeds made at two places of great diſtance, ſuppoſe we one at *Rouceſter* in *Staffordſhire,* and the other at *Nottingham,* may not have all contrary Witneſſes, and yet perhaps might both be made within a moneth one after the other: See here your Reaſon: and *William Bacon* one of the Witneſſes to *Richard Bacon's* Deed, I find Witneſs to a Deed of *Randolph Blundevil, Monaſticon.* Vol. 2. *Page* 261. a.

But ſuppoſe all (as you ſay) that *Richard Bacon* were Contemporary with *Randolph de Gernoniis,* then muſt *Bacon's Mother* be Daughter of the firſt *Randolph:* yet ſhe may be a Baſtard for all that: [and it is probable ſhe was ſo:] for I find but two Daughters of that *Ran-*[26]*dolph: Agnes* married *Robert de Grentemaiſnil,* a great Family then in *Normandy;* and *Adeliza* married to *Richard de Clare* Earl of *Clare* and *Hertford* in *England.* But no Legitimate Daughter (I warrant you) ever married any of the *Bacons:* whereas I ſuppoſe *Richard Bacon* Contemporary with *Randolph Blundevil,* and then ſhe was certainly the Daughter of *Hugh Cyveliok,* and a Baſtard.

[The words within brackets are blotted out in the printed copies.]

[Page 26.]

It is certain by *Bacon's* Deed, that, that *Randolph* Earl of *Cheſter,* from whom *Richard Bacon* obtain'd Confirmation and Warranty, was Uncle to the ſaid *Richard Bacon:* and alſo, that that *Randolph* Earl of *Cheſter,* who did grant him a Confirmation and Warranty ſet down in the Monaſticon, *Vol.* 2. Page 268. was *Randolph Blundevil,* as you confeſs *Page* 73. of your Reply.

But (ſay you) the Deed of that Earl *Randolph* his Uncle is [Page 27.] not in the Monaſticon but was proba-[27]bly loſt: but how doth it appear, that ever there was ſuch a Deed, or any other Deed of Confirmation but that in the Monaſticon? It is a great deal more probable, that there was no ſuch other Deed, but only this of *Randolph Blundevils,* which doth agree and anſwer to the

Deed of *Richard Bacon* in all Points exactly: and ſo, his Mother muſt needs be Daughter of *Hugh Cyveliok.*

And now I have done; nor ſhould I have given my ſelf, or the Reader any trouble at all, more then the Precedents before mentioned in theſe my *Addenda* (which were omitted before) had it not been for the ſaid Accuſations, untruths, and abſurdities charged upon me in your Reply. And it is well you Publiſhed the ſame now in my Life time, whiles I had opportunity to clear them to the world: I might here alſo have taken notice of many other Errours and defects in your Reply, with
[28]your inſufficient Anſwers to what I have formerly ſaid, but I [Page 28.]
wave them all in regard of my word: and ſubmit my ſelf to the judgment of all Learned, Judicious, and Impartial Readers, who ſhall duly weigh what hath been already ſaid on both ſides, touching the Conteſt of *Amicia*, and others: *Nam magna eſt veritas, & prævalebit:* And muſt declare, that what I have writ is truly the Opinion and Judgment of

Sir,
Your Affectionate
Coſin and Hum-
ble Servant

Peter Leyceſter.

Moberly
Novemb. 6.
1673.

AN
ANSWER
TO
Sir *PETER LEICESTER'S*
Addenda,
OR,
Some things to be Added in his
ANSWER to
Sir *THOMAS MAINWARINGS*
BOOK.

WRITTEN
By the faid Sir *Thomas Mainwaring.*

LONDON,
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[1]TO [Page 1.]

Sir *Peter Leiceſter* Baronet.

SIR;

I Received your *Addenda* to the *Anſwer* to my former Book, on Monday the 12th of *January* laſt; in writing of which, whether you are juſt to your word; or not, let the whole World Judge.

As for that which you ſay in the firſt *Page* thereof, I think it was not worth your adding to what you had formerly written, unleſs you could make it to appear that thoſe perſons whom you call judicious men, be ſuch whoſe opinions are like to be of equal weight with thoſe Judges and Heralds who are againſt you, which (I believe) will be very hard for you to do: And if you [2]could, [Page 2.] we ſhould therein be but upon equal termes.

When you tell me in your 2 *Page*, that you do give me two or three precedents more, beſides that of *Geva*, to prove that Lands in thoſe elder ages did paſs *in libero maritagio*, I cannot but ſmile, to ſee that you ſtill ſay, that the gift to *Geva* was ſuch a Precedent, conſidering how in my *Defence* of *Amicia*, *Page* 43, 44. and ſo on to the middle of the 50 *Page*, as alſo, in my *Reply* to your *Anſwer*, *p.* 23. and *p.* 45, 46. and ſo on to the 60. *Page*, I have made it to appear, that it is very uncertain that the ſaid *Geva* was a Baſtard, but moſt certain that the Gift to *Geva* was not a Gift in *Frank-marriage*.

And now I ſhall come to your pretended new precedents, which you mention *Page* 2. and ſo on to the end of the 6 *Page*

of your *Addenda*, and in my Anſwer thereto, I ſhall make it very clear that they are not ſuch precedents as you take them to be, but are groſs miſtakes of yours, you erring in no leſs then theſe five particulars following. Firſt, in conceiving that *Joane*
[Page 3.] wife of the ſaid *Lhewellin*, and daughter to King [3] *John*, was that baſe daughter named *Joane*, which King *John* had by *Agatha* daughter to the ſecond *William* de *Ferrars* Earl of *Derby;* Secondly, in ſaying that the ſaid *Lhewellin* did marry *Joane* daughter of King *John* in the year 1206. Thirdly, in alledging that King *John* gave *Elleſmere in libero maritagio* with his ſaid daughter *Joane.* Fourthly, in pretending that the Mannor of *Budeford* in *Warwickſhire*, and the Mannor of *Suttehall* in *Worceſterſhire* were given by King *John* to the ſaid *Lhewellin* with any daughter of the ſaid King *John.* And laſtly, in ſaying that that *Joane* who was wife to *Robert* de *Audeley*, was the ſame *Joane* who was wife to the ſaid *Lhewellin.*

And firſt, you erre in ſaying that *Joane* who was the wife of the ſaid *Lhewellin*, was the ſame *Joane* which King *John* had by the ſaid *Agatha;* For as you may ſee in your *Hiſtorical Antiquities, p.* 132. compared with *Vincent, p.* 204. (which is the place you bring for proof of what you ſay) the ſaid *Agatha* was daughter to *William Ferrars* Earl of *Derby*, by his wife *Agnes* the
[Page 4.] third ſiſter and coheir of *Randle Blundevil* Earl of [4] *Cheſter* and *Lincolne*, which *Agnes* was daughter of *Hugh Cyveliok* Earl of *Cheſter* by his wife *Bertred.* Now the ſaid *Hugh Cyveliok* dying as appears in your *Hiſt. Ant. p.* 134. in the year 1181. and the ſaid *Bertred* his wife (as is proved *Rot. de Dominabus pueris*, &c. *in Scacc. penes Remem. R. ſub. Tit. Linc. Rot.* 1.) being but Twenty four years of age when her ſaid husband dyed, it will from thence appear, that *Joane* daughter of the ſaid *Agatha* could not poſſibly be the wife of the ſaid *Lhewellin;* For, if we ſuppoſe that *Randle Blundevil* was younger then his third ſiſter *Agnes* (which I am confident you do not believe) and that the ſaid *Bertred* was begotten with Child at thirteen yeares of age, and came ſo nimbly with her children as to have her firſt daugh-

ter when ſhe was fourteen years old, her ſecond daughter when ſhe was fifteen years old, and her third daughter *Agnes* when ſhe the ſaid *Bertred* was ſixteen years old, then the ſaid *Agnes* would be eight years of age in the ſaid year 1181. If we alſo ſuppoſe the ſaid *Agatha* to be the eldeſt of the ſix children of the ſaid *William Ferrars* and *Agnes*, (though ſhe [5]might be the youngeſt) and that ſhe the ſaid *Agnes* had the ſaid *Agatha* when ſhe the ſaid *Agnes* was but fourteen years old, then ſhe the ſaid *Agatha* would be born in the year 1187. If we alſo ſuppoſe that the ſaid *Agatha* had her daughter *Joane* when ſhe the ſaid *Agatha* was but fourteen years old, then the ſaid *Joane* would be born in the year 1201. and yet by all this ſtrange way of reckoning, *Joane* the daughter of *Agatha* would have been but about three years of age, when the ſaid *Lhewellin* was married, which (as anon will appear) was in the year 1204. So that this *Joane* daughter of *Agatha* was ſo far from being wife to the ſaid *Lhewellin*, that there is no likelihood that ſhe was born at the time of the ſaid *Lhewellins* marriage. But the ſaid *Lhewellin* was 28 years of age in the year 1204, For, *Sylveſter Giraldus Cambrenſis* in his *Itiner. Cambr.* printed at *London* 1585, *p.* 64. and 203. tells us, that in the year 1188, (at which time the ſaid *Silveſter* was living) the ſaid *Lhewellin* was 12 years old. [Page 5.]

Secondly, you run into another error in alledging that the ſaid *Lhewellin* [6]did marry his wife *Joan* in the year 1206. whereas he was her Husband in the year 1204. in the 6 year of King *John*, as will appear by your own Authors, *Stow* and *Speed*, and by ſeveral others; as alſo by this Copy of King *John*'s Precept to the Sheriff of *Shropſhire*, to make Livery of the ſaid Lordſhip of *Elleſmere*. [Page 6.]

Ex. Rot. Clauſo de anno Sexto Regis Johannis *(in arce* Lond.*) membrana 7.*

Rex Vicecom. Salop. Salutem. Scias quod dedimus dilecto filio noſtro Lewellino *manerium de* Elleſmere, *cum omnibus pertinentiis ſuis, in maritagio filiæ noſtræ, Et ideo, &c. Teſte, &c. apud Wigorn.* 23. *Martii.*

Thirdly, you are guilty of a third error, in pretending that King *John* did give the Lordſhip of *Elleſmere, in libero maritagio* with his Daughter *Joan;* for your own Authors, as well as the aforeſaid Record, do only ſay, that it was given *in Maritagio;* ſo that your arguing that *Elleſmere* was given *in*
[Page 7.] *maritagio,* and therefore was given *in libero* [7] *maritagio,* is very irrational; For I have ſhewed in the 39 and 40 pages of my *Reply* to your *Anſwer,* that *maritagium* is twofold, and that Lands may be given *in maritagio,* to one that is not of the Blood, but (as I have often proved) Lands cannot be given *in free-marriage,* but with one that is of the whole Blood, neither can they be ſo given, unleſs the word *liberum* be uſed as well as the word *maritagium,* as I have ſhewed in the 56 and 57 pages of my ſaid *Reply.*

But if it were ſo, that you could have proved *Joan,* the wife of the ſaid *Lhewellin,* to have been the baſe Daughter of King *John* by the ſaid *Agatha:* and if it had been ſo, that this gift of *Elleſmere* had been *in libero maritagio,* yet it would have ſtood you in no ſtead; for as you may ſee *Coke* upon *Littleton, fol.* 21. *b. if the Donee* (in a Gift of Frank-marriage) *that is cauſe of the gift be not of the blood of the Donor,* yet there may paſs an Eſtate for life, if Livery be made; And in this caſe of *Elleſmere* (as appeárs before) Livery was made; And you may find in the
[Page 8.] *Welſh Hiſtory,* [8]put out by Doctor *Powell,* p. 306. and *Mat. Par.* p. 625, and 626. that though *Elleſmere* was injoyed by the ſaid *Lhewellin,* yet it was not long enjoyed by his Son *David,* but was the next year after the death of *Lhewellin* in (or about) the Feaſt of the Decollation of *St. John Baptiſt,* in the hands of King *Henry* the III. and as appears by good Record, the cuſtody thereof, together with the Hundred of *Elleſmere,* was afterwards committed by the ſame King to the Truſt of *Hamon le Strange.*

Fourthly you are alſo miſtaken in thinking that the Mannors

of *Budeford* and *Suttehall*, were given by King *John* to *Lhewellin* with his Daughter *Joan*, and for all your boafting demand of what can be clearer? yet your Deed is far from proving what you fuppofe it doth; For it neither fays that King *John* gave thofe Mannors *cum filia fua baftarda*, or that he gave them *cum filia fua*.

And whereas you fay in the fourth page of your *Addenda*, that *the faid Prince* Lhewellin *never married any* [9] *Daughter of King* John *but the faid* Joan, I fhall thus far agree with you, That he married a Daughter of King *John*'s, named *Joan*; and but one Daughter of his, but not that *Joan* which you fuppofe. But certainly your conceit that *Lhewellin* could not have a former Wife, unlefs fhe was another Daughter of the faid K. *John*, is a very wild one; For, King *John* might give thofe Mannors to *Lhewellin* with any Woman that was of his kindred; and it is very apparent that our Engliſh Kings about that time were very defirous to have Alliance with the Princes of *North-Wales*; For, befides that Match of *Lhewellin* with the Daughter of King *John*, and this Match of *John Scot* with *Hellen*, Daughter of the faid *Lhewellin*, *David ap Owen* (Uncle to the faid *Lhewellin*) did marry a Sifter of King *Henry* the II. as you may fee in *Sylveſter Giraldus*. p. 203, and the *Welſh Hiſtory*, p. 235. And King *Edward* the I. alfo caufed *Llewellin ap Griffith Lhewellin*, to marry a Daughter of *Simon de Mountford*, Earl of *Lieceſter*, which Daughter the faid Earl had by a Daughter of King *John*, and this, although the faid *Lhewellin ap* [10] *Griffith Lhewellin* would have married elfewhere, as you may read in *Knighton col.* 2462. *num.* 26, and *num.* 50. And although we cannot tell the name of her who was the firft wife of that *Lhewellin*, who married *Joan* the Daughter of King *John* as aforefaid, we being ignorant of that, as we alfo are of the Wives of many great perfons, and of many other things in thofe elder ages, yet the faid *Lhewellin* muft neceffarily have a former Wife, as will appear by thefe following Reafons.

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[Page 10.]

Firſt, becauſe moſt Writers, as *Fabian* in the 7 Part of his *Chronicle*, p. 13. a. *Stow*, p. 167. a. Doctor *Powell* in his Notes on the *Welſh Hiſtory*, p. 259. *York*, p. 20. *Speed* in his *Hiſtory* printed at *London*, 1632. p. 573. *Vincent* on *Brooke*, p. 204. *Cambden* in his *Britania*, in Latine, Printed at *London*, 1607. p. 453. and *Knighton*, col. 2417. num. 42. do all tell us of Lands given by the ſaid King *John* to the ſaid *Lhewellin*, with his Daughter *Joan*, and yet none of them do ſay, that theſe Mannors of *Budeford* and *Suttehall*, or either of them were given with the ſaid *Joan*.

[Page 11.] [11]Secondly, Becauſe our beſt Authors, who tell us what Children the ſaid *Lhewellin* had by the ſaid *Joane*, do only name one ſon, viz. *David*, and two daughters, viz. *Marret* married to *John* de *Bruſe*, and *Gladys* married to Sir *Raph Mortimer*, but none of them doth name *Hellen*, ſo that it ſeems *Hellen* was no daughter of his by the ſaid *Joane*.

Thirdly, Becauſe (as before appears) the ſaid *Lhewellin* married the ſaid *Joane* in the year 1204. Now *Randle* Earl of *Cheſter* coming to the City *Damiata* in the beginning of the year 1218. as you may ſee in *Matt. Paris*, *p.* 303. *n.* 24. & 309. *n.* 16. compared together, and this Match of *John Scot* and the ſaid *Hellen* as you may find in *Knighton*, *col.* 2430. *n.* 9. being agreed on by *Randle* Earl of *Cheſter* and the ſaid *Lhewellin* before the ſaid *Randle* went thither (and by conſequence about the year 1217.) What likelihood is there that the ſaid *Joane* could have any daughter old enough to be married to the ſaid *John Scot*, it being impoſſible that *Lhewellin* could at that time have any
[Page 12.] Child by King *John*'s daughter, who could be [12]above the age of twelve years; And though you pretend that *John Scot* did marry the ſaid *Hellen* about the year 1222, yet you do that, becauſe ſhe could not well be marriageable till about that time if her Mother had been married in that year, which you falſly ſuppoſed ſhe was. But there is no likelihood that *Randle Blundevil*

would go to the *Holy Land* after the ſaid marriage was agreed on, before it was Conſummated, and that he had thereby ſome aſſurance that the ſaid *Lhewellin* would keep that peace which was then made: But, *Lhewellin* might very well have a daughter by a former wife, who in the year 1217. might be old enough to be married to *John Scot*, for the ſaid *Lhewellin* (as appears by the proofes before) was then aged 41 years; And it is like that *John Scot* was then of a good age, for, if his Grandmother *Bertred* had his Mother *Maude* when ſhe the ſaid *Bertred* was 18 years of age, and if his Mother *Maude* had him the ſaid *John Scot* when ſhe was alſo 18 years of age, yet *John Scot* would be born in the year 1193, and would be 24 years old in the year 1217.

[13]Fourthly, (which doth abſolutely clear the point) the ſaid *Lhewellin* could not poſſibly have given the Mannors aforeſaid *in free marriage* with his daughter *Hellen* unto the ſaid *John Scot*, unleſs they had been given to the ſaid *Lhewellin* with a former wife, and that the ſaid *Hellen* was the heir unto his former wife; For when lands are given *in free marriage*, the husband hath not the inheritance of the ſaid lands, neither hath he ſo much as an eſtate for life, until he be Tenant by the Curteſie of *England;* And you cannot pretend (according to your old ſubterfuge) that the Law in this point was differently holden in thoſe elder times from what it is now; For, as you may ſee in my Lord *Coke* on *Littleton*, *fol.* 22. *a.* the husband in the time of King *Edward* the Third, was ſo far from having the inheritance of Lands given to him in Frankmarriage, that if he and his wife were divorced, the woman ſhould enjoy the whole land; And for this he cites in the Margent 13 *Edw.* 3. *tit. Aſs.* 19 *Edw.* 3. *Aſs.* 83. with ſeveral other proofes of the like nature; Alſo in the [14]time of King *Edw.* 1. as you may ſee in the Antient Treatiſe called *Fleta*, the inheritance in theſe caſes was in the wife, and not in the husband: For in the 3 Book and 11th Chapter, *de donationibus in maritagiis* it is thus ſaid, *Et quam-*

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vis fiat mentio in donatione, quod terra data ſit in maritagium tali viro, cum tali uxore, res data tamen eſt liberum tenementum uxoris, & non viri, cum non habeat niſi cuſtodiam cum uxore, donec liberum tenementum ſibi accreſcat, per legem Angliæ: Secus ſi pro homagio & ſervitio viri & in Maritagium facta fuerit donatio. And ſo alſo *Bracton* (who lived in the time of King *Henry* the Third, and alſo in the time of the ſaid *Lhewellin*) *lib.* 2. *cap.* 11. ſays, *Si autem fiat mentio quod terra data ſit in maritagium cum uxore & eorum hæredibus, communes hæredes de corpore utriuſque admittantur, qui ſi defecerint, revertitur terra data, & alii remotiores excluduntur: quia res data eſt liberum tenementum uxoris, & non viri, cum non habeat* niſi cuſtodiam *cum uxore. Si autem ſic terra detur in Maritagium, viro cum uxore & eorum hæredibus, pro homagio & ſervitio viri (quod fit aliquando) licet*

[Page 15.] [15]*detur in liberum maritagium, quæ ſunt ſibi ad invicem adverſantia ſive repugnantia, tunc prefertur homagium, & erit ac ſi fieret donatio tam viro quam uxori.* And ſo alſo my Lord *Coke* on *Littleton, fol.* 21. *b.* tells us, *That if the King give Land to a man with a woman of his kindred in frank-marriage, and the woman dyeth without iſſue, the Man in the Kings caſe ſhall not hold it for his life, becauſe the woman was the cauſe of the gift, but otherwayes it is in the caſe of a common perſon,* and for this in the Margent he cites 9 *H.* 3. *Dower.* 202. So alſo Mr. *Glanvile* (who lived in the time of King *Henry* the Second, and before the time of the ſaid *Lhewellin*) *lib.* 7. *cap.* 18. to the ſame purpoſe ſayes, *Cum quis itaque terram aliquam cum uxore ſua in maritagium ceperit, ſi ex eadem uxore ſua hæredem habuerit filium, vel filiam clamantem & auditum infra quatuor parietes ſi idem vir uxorem ſuam ſupervixerit, ſive vixerit hæres ſive non, illi in vita ſua remanet maritagium illud, poſt mortem vero ipſius ad donatorem vel ejus hæredes eſt reverſurum. Sin autem ex uxore ſua nunquam habuerit hæredem, tunc ſtatim poſt mortem uxoris ad donatorem vel*

[Page 16.] *hæredes ejus re-*[16]*vertetur maritagium;* ſo that it is clear that the lands which were given with the ſaid *Hellen* to the ſaid *John Scot* were given to the ſaid *Lhewellin* with a former wife, who

was Kinſwoman to the ſaid King *John*, and Mother to the ſaid *Hellen*, for otherwiſe the ſaid Gift to *John Scot* could not be good; But if they were given to the ſaid *Lhewellin* with a wife who was Mother to the ſaid *Hellen*, but dead at the time of the gift to the ſaid *John Scot*, then the ſaid *Lhewellin* being Tenant by the Curteſie of *England*, and the inheritance being in the ſaid *Hellen* he might paſs away his Eſtate to the ſaid *John Scot* with the ſaid *Hellen*, and they might lawfully hold the ſaid Mannors *in libero maritagio*, according to the Agreement made betwixt the ſaid *Randle* Earl of *Cheſter* and *Lincolne*, and the ſaid *Lhewellin* Prince of *North-Wales*.

Laſtly, You erre a fifth time in ſaying, that *Joane* the wife of *Robert* de *Audeley* was the ſame *Joane* who was wife to the ſaid *Lhewellin;* For, that cannot poſſibly be, becauſe *Robert* de *Audeley* married *Joane* the baſe daughter of King *John* by *Agatha*, who might well be marriageable in the 14 year of King *Henry* [17]the Third, which fell out to be in the years 1229. and 1230. But, I have before ſhewed that there is no poſſibility that the ſaid *Joane* daughter of *Agatha* could be wife to *Lhewellin* in the year 1204. nor any likelihood that ſhe then was born. And this miſtake of yours doth further appear, becauſe (as before is ſhewed) Prince *Lhewellin* was husband to the ſaid *Joane* in the year 1204. and (as you well know and confeſs) he dyed not till the 24th year of King *Henry* the 3d. How then can that *Ioane* who was wife to *Robert* de *Audeley* in the 14th year of King *H.* 3. be the ſame *Joane* who was wife to *Lhewellin?* unleſs ſhe had two husbands living at one time. Or, How can what your Author *Vincent* ſayes be true, *That ſhe was re-married to* Robert *de* Audley, 14 H. 3. *after the death of* Lhewellin, ſeeing the ſaid *Lhewellin* died not till the 24th year of *Henry* 3d? and did alſo outlive his wife *Joane* three yeares? Certainly, if *Vincent* had known as well as you, how long the ſaid *Lhewellin* lived, he would never have ſaid that *Joane* the wife of *Robert* de *Audley* was the ſame *Joane* who was wife of *Lhewellin;* But though you do acknow-[18]ledge that *Vincent* did

[Page 17.] [Page 18.]

erre in ſaying *Lhewellin* was dead, when *Joane* was married to *Robert* de *Audeley*, yet you would willingly juſtifie the other part of his error, in making *Audeleys* wife *Joane* to be the ſame woman with *Lhewellins* wife *Joane*, and to do this, you fancy that *Lhewellin* was divorced from his wife *Joane*, though there be no Author who doth alleadge any ſuch thing. And, Can we think that a Prince of *North-Wales*, and a daughter of *King John* could be divorced, and one or both of them marry again in the life-time of each other, and no writer take notice thereof? Or, can it be, that *Mat. Paris*, who lived at that very time, ſhould (in his 365. *Page*) ſpeak of *William* de *Braus* his being taken in Adultery with the ſaid *Joane*, with an (*ut dicebatur*) only? Or, the *Welch Hiſtory* (*p.* 286.) with an (*as it was reported*) if the Adultery was ſo notorious, as that ſhe was divorced for it? Indeed, you tell us out of *Knighton*, *col.* 2439. that *Anno Domini* 1228. 13 *H.* 3. Leolinus *Princeps Walliæ rebellare cepit:*——— *Tandem vero poſt concurſus varios, & diſcrimina multa, per quod-*
[Page 19.] *dam maritagium cum Rege concorda-*[19] *tus eſt, & in pace dimiſſus;* and from theſe words, *per quoddam maritagium*, you would inſinuate a *Divorce*, and a new Marriage of the ſaid *Joane*, with *Robert* de *Audeley*, which divorce and marriage is further fetcht then any thing that I ever heard of in all my life; For, it is not likely that the puting away of the Kings Siſter could be a means to procure Peace, and none knowes betwixt what parties the marriage there ſpoken of was; But you did well to break off at the words *in pace dimiſſus*, for if you had added theſe words of *Knighton*, which immediately follow the other, viz. *Anno Domini ſequenti* (the Figures 1229. being alſo put in the margent) Lewelinus *eundem* Willielmum *de* Braus *Baronem nobilem quem ad feſta Paſchalia invitaverat, poſt epularum copiam ſuper adulterio & violatione uxoris ſuæ accuſans, & malitioſe eum & hoſtiliter ingreſſus eſt, & eum in carcerem trudens morte turpiſſima & abſque omni judicio ſententialiter interemit.* It would from thence have appeared that neither the Divorce or ſecond marriage of the ſaid *Joane* could thereby be meant, unleſs you

would have a Divorce in the year 1228, for an [20]Adultery not committed till the year 1229. And with *Knighton* agrees the ſaid *Mat. Paris, p.* 365. *n.* 10. (mentioned in the 5 *Page* of your *Addenda*) who ſaith, that William *de* Braus *was hanged for that ſuppoſed Adultery, in the moneth of April, in the year* 1230. And we well know, there is but one week betwixt the laſt day of the year 1229. and the firſt day of *April* 1230. [Page 20.]

Alſo, in the 6 *Page* of your *Addenda*, where you tell us out of the *Welſh Hiſtory* put out by Doctor Powel, *that* Lewellin's *wife died in the year* 1237. if you would have added what is further ſaid in the ſame Page, it would have given ſatisfaction that *Lhewellins wife was never divorced*, For, *Page* 293. you may thus read, *The next Spring* (1237.) *died* Joane *daughter to King* John, *Princeſs of Wales, and was buried upon the Sea ſhore within the Iſle of* Angleſey *at* Lhanvaes *as her pleaſure was, where the Prince did build an houſe of barefoot-Friars over her grave.* Now certainly the *Welſh Hiſtory* would not then have called her *Princeſs of Wales*, nor her husband have built that houſe over her, if ſhe had been di-[21]vorced from *Lhewellin*, and Married to the ſaid *Robert* de *Audeley*. [Page 21.]

If any object, That though *Joane* the wife of *Lhewellin* was not the baſe daughter of King *John* by *Agatha*, yet it is like ſhe was his baſe daughter by ſome other woman, becauſe of thoſe Authors which you cite to that purpoſe; I anſwer, and ſay, that it is nothing to the caſe of *Amicia*, whether the ſaid *Joane* was a Baſtard or not, as I have before proved; But however it doth not yet certainly appear to me that ſhe was ſo; For, though *Vincent* upon *Brooke, Speed, Stow*, and the Monke of *Cheſter* who did write the *Poly-Chronicon*, and ſome others do ſay, that ſhe was a Baſtard, yet they are not much to be regarded, becauſe the ſaid Author of the *Poly-Chronicon*, (as *Voſſius* tells you in his Book *de Hiſtoricis Latinis, p.* 487.) dyed in the year 1363. which was 159. years after *Lhewellin* married the ſaid *Ioane*, and yet

the ſaid Monke lived long before any other Author (which I have taken notice of) who doth call her a Baſtard. Let us therefore examine the matter a little; and in order thereto, let
[Page 22.] [22]us obſerve how many wives the ſaid King *Iohn* had.

Firſt, he married *Alais* daughter of the Earl of *Moriana* in the year 1173. as you may read in *Brompton*'s *Chronicon, col.* 1082. *n.* 35. *Hoveden* (*Frankfurt* Edition, printed 1601.) *Page* 532. *n.* 5. *Matt. Paris* (put out by Doctor *Watts*) *Page* 127. *n.* 5. (which Editions of *Hoveden* and *Paris*, I do all along follow) and the like you may find in *Vincent* upon *Brooke*, *Page* 133. who alſo there tells you, that by *Moriana* is not meant *Moreton*, but *Savoy*, with which *Matt. Par. p.* 751. *n.* 46. doth alſo accord; But the ſaid *Alais* being then ſcarcely ſeven yeares of age, as you may ſee in *Matt. Paris, p.* 127. *n.* 6. and dying preſently after, the ſaid King *Iohn* could not poſſibly have any iſſue by that wife.

Soon after this, *viz.* in the year 1176. (as you may read in *Hoveden, p.* 553. *n.* 46. and *Matt. Paris, p.* 132. *n.* 29.) there was an Agreement for a marriage to be had between the ſaid *Iohn* (then youngeſt ſon of the ſaid King *H.* 2.) and a daughter of
[Page 23.] *William* Earl of *Gloceſter*, [23]ſon of *Robert* Earl of *Gloceſter*, which ſaid daughter is not there named, but her name was *Hawiſia* or *Avis*, and the marriage afterwards took effect, but he was divorced from her in the year 1200, as will anon appear.

Thirdly, immediately upon his Divorce he married *Iſabel* daughter of the Earl of *Engoliſme*, who was his laſt wife; for, ſhe ſurvived him; and by her he had iſſue (as will be agreed by all) *Henry*, (afterwards King *Henry* the Third) *Richard*, Earl of *Cornwall*, (afterwards King of the *Romanes*) *Ioane* wife of *Alexander* the ſecond, King of *Scots*, *Eleanor*, firſt married to *William Marſhal* the younger, Earl of *Pembroke*, and afterwards to *Simon Mountford* Earl of *Leiceſter*, as alſo *Iſabel*, who was ſixth wife to *Frederick* the ſecond, Emperour of *Germany*.

But King *Iohn* marrying the ſaid *Iſabel* in the year 1200. could have no child by her old enough to be married to the ſaid *Lhewellin* in the year 1204.

[Page 24.] 24 Neither could *Ioane* the wife of *Alexander* King of *Scots* be the ſame *Ioane* who was wife to *Robert* de *Audeley*, for, ſhe was wife to the ſaid *Alexander* in the year 1221. as appears in your *Hiſt. Ant. p.* 60. and *Mat. Paris, p.* 313. *n.* 12. and died before her husband (ſay you) in the year 1236. and was buried at *London;* But, *Mat. Paris*, who lived in the ſame time with her (*p.* 468. *n.* 34.) tells you the very day of her death, and ſays ſhe died in the year 1238. in *England*, and was buried at *Tarente.* But you in your 60 *p.* and *Mat. Paris, p.* 770. *n.* 39. do agree that the ſaid *Alexander* did ſurvive the ſaid *Ioane*, and that he died in the year 1249.

The only queſtion then will be, Whether *Lhewellins* wife was King *Iohns* legitimate daughter by his wife Hawiſia? which if ſhe was, then ſome of your Authors taking notice but of two daughters named *Ioane*, which the ſaid King had, did thereupon miſtake *Ioane* the wife of *Lhewellin*, for *Ioane* the wife of *Robert* de *Audeley*, and ſo did miſlead ſeveral of our later Authors into the like error.

[Page 25.] 25 Sure I am, that *Mat. Paris*, who was contemporary with the ſaid *Ioane, p.* 231. *n.* 52. calls her *the Kings daughter*, without the addition of Baſtard, or any thing tending thereto; His words are theſe, *Quo facto, venit alius Nuncius ex parte filiæ ejuſdem Regis uxoris videlicet* Leolini *Regis* Walliæ, *&c.* Alſo in the raign of King *H.* 3. her ſon *David* is by him (*p.* 537. 569. and in many other places) ſtiled *Nepos Regis*, and *p.* 695. called *Nepos Regis ex Sorore*, and *p.* 570. he is ſaid to be *propinquus Regi conſanguinitate.* Alſo *Knighton, col.* 2417. *n.* 42. thus ſays of her, *Rex Johannes dedit filiam ſuam Leolino Principi Walliæ in uxorem, & cum ea dedit caſtellum & totum territorium de* Elleſmere *in*

confinio Walliæ. And the King himſelf in the aforeſaid *Record* gives her the title of *filiæ noſtræ.*

Alſo in *Lib. Barlings* (in which Book beſides what concernes the Abby of *Barlings* in *Lincolnſhire*, there are certain *Annals* (beginning *An.* 1050. and ending *An.* 1231.) ſhe is called the ſaid
[Page 26.] [26]Kings daughter, without the Addition of Baſtard; For, as I am informed by a judicious perſon, who, at my requeſt did lately ſearch the ſaid Book in Sir *Iohn Cottons* Library, theſe words, *Lewelinus diſponſavit filiam Regis* I. are the only words, *fol.* 22. *b.* which concern the ſaid matter: And yet you, in the 2d. *Page* of your *Addenda* do ſay, *That the ſaid* Joane Lib. Barlings, Fol. 22. *b. is acknowledged and called baſe daughter of K.* John. I hope therefore the Reader will take heed how farr he gives credit to what you ſay.

Neither have I as yet found any Author who lived in that Age with her, who hath ſaid ſhe was a Baſtard; Indeed, our later Authors as *Vincent* and others, who ſay that ſhe was illegitimate, do many of them ſay, That King *Iohn* was divorced from his ſecond wife, as well for that ſhe was barren, as within the degrees of conſanguinity, which barrenneſs, if it could be made to appear, would certainly prove the ſaid *Ioane* to be a Baſtard; And, this opinion hath ſo far prevailed in this laſt age, that
[Page 27.] whereas learned Mr. *Cambden*, as [27]you may ſee in his *Britannia* in Latine printed at *London* 1607. *p.* 259. ſpeaking of the Divorce of the ſaid *Hawiſia* (whoſe name he miſtakes and calls *Iſabel*) doth only uſe theſe words *illam repudiatam*, Doctor *Philemon Holland* in the Engliſh Tranſlation (unjuſtly) renders it thus, *That King* John *did repudiate her upon pretences, as well that ſhe was barren, as that they were within the prohibited degrees of conſanguinity.* But our antient Hiſtorians ſay nothing of her being Barren.

For this ſee *Hoveden* (who was living all the time that *Hawi-*

ſia was wife to *K.* John) *p.* 803. *n.* 34. in the year 1200. *Eodem Anno factum eſt divortium inter* Johannem *regem Angliæ et* Hawiſam *uxorem ejus filiam* Willielmi *comitis* Glouceſtrriæ *per* Heliam Burdegalenſem *Archiepiſcopum, & per* Willielmum *Pictavenſem, & per* Henricum *Sanctonenſem epiſcopos: erant enim affines in tertio gradu conſanguinitatis. Facto itaq; Divortio inter* Johannem *regem Angliæ, & uxorem ſuam, ipſe Rex Angliæ conſilio domini ſui* Philippi *regis* Franciæ *duxit ſibi in uxorem* Iſa-[28]bel *filiam* Ailmari *comitis de* Engoliſmo, *&c.* [Page 28.]

So alſo *Mat. Paris* (living in the time of the ſaid *Ioane*) *p.* 200. *n.* 23. in the ſaid year 1200. *Eodem tempore celebrato Divortio inter Regem* Anglorum *& uxorem ſuam* Hawiſam *comitis* Gloverniæ *filiam, eo quod affines erant in tertio gradu conſanguinitis. Duxit idem Rex, conſilio Regis* Francorum Iſabel *filiam comitis* Engoliſmi.

So alſo *Mat. Weſtminſter* in that Edition printed at *London,* 1570. *lib.* 2. *p.* 76. *n.* 25. *Anno gratiæ. M.CC. Rex* Johannes Iſabellam *filiam comitis* Engoliſmi *duxit in uxorem & Dominica proxima ante feſtum ſancti* Dyoniſii *conſecrata eſt in reginam ab* Huberto *Cantuarienſi* Archiepiſcopo, *quia celebratum fuit divortium inter ipſum &* Hawiſiam *comitis* Gloverniæ *filiam, eo quod contingebant ſe in tertio conſanguinitatis gradu.*

Now certainly theſe antient Authors muſt needs in this point be credited before thoſe that lived ſo long after them, and eſpecially ſince all thoſe that I have [29]met with who ſay ſhe was barren, or do call her a Baſtard, do not one of them know her true Chriſtian-name, but are either ſilent therein, or elſe (which the moſt of them do) do call her *Iſabel* inſtead of *Hawiſia.* [Page 29.]

See alſo the words of *Rad.* de *Diceto* (who lived in the time of the ſaid King *Iohn*) *col.* 706. *n.* 5. which words are theſe, *Celebratum eſt divortium inter* Johannem *regem Angliæ & filiam comitis*

Gloceſtriæ *in* Normannia, *ab epiſcopis* Liſorienſi, Baiocenſi, Abrincenſi, *& aliis epiſcopis qui interfuerant, quam ipſe tempore patris permiſſione* Romanæ *eccleſiæ duxerat in uxorem cum Comitatibus de* Gloceſtria, *de* Sumerſatum, *de* Devenefire, *de* Cornwaille, *et aliis quamplurimis per* Angliam *honoribus. Set ille ſublimioris thori ſpe raptatus, conſilio pravorum eam abegit, unde magnam ſummi Pontificis ſcilicet,* Innocentii tertii, *et totius curiæ* Romanæ *indignationem incurrit, præſumens temere contra leges et canones diſſolvere quod eorum fuerat auctoritate colligatum.*

[Page 30.] 30 And now let any man judge, if ſhe had been barren, whether that would not have been alleadged as a cauſe of King *Iohns* putting her away, as well as his deſire of matching into a more ſublime family; So that I ſee no reaſon to conclude the ſaid *Ioane* to be a Baſtard, until it be proved that ſhe was ſo, by ſome Record, Deed, or good Author who lived in that Age, and eſpecially ſince the ſaid *Hawiſia*'s daughter (if ſhe had one) might very well be old enough in the year 1204. to be married to the ſaid *Lhewellin* Prince of *North-Wales;* But it is not material to the caſe in hand, whether the ſaid *Ioane* was a Baſtard or not, Becauſe all the Gifts you mention in your *Addenda,* were either not gifts *in free-marriage,* or elſe were not given to the ſaid *Lhewellin* with the ſaid *Ioane.*

As to what you ſay in your 7 *Page,* I did in my former Book give you ſeveral Reaſons, why the words of *Glanvil* did not prove what you ſuppoſed they did, and in the 38 and 39 *Pages*
[Page 31.] of my *Reply* did tell you how you had left 31 them unanſwered, and did alſo there inform you, that Mr. *Glanvil* did not ſay, That Lands might be given with any woman *in liberum maritagium,* but only *in maritagium;* and yet after all this, you have the confidence to father upon Mr. *Glanvil* what he never either meant or ſaid.

In your 8. *Page,* you ſay I have charged you with *many abſolute*

untruths and groſs abſurdities, and in ſtead of modeſt and clear Anſwers to the very point or hinge of the controverſie, did burſt out into extravagant expreſſions in things upon the By, which gives you occaſion to imagine that I think my cauſe declining. But thoſe, and ſeveral other of your expreſſions, ſeeming to proceed more from paſſion then reaſon, I ſhall at preſent paſs them by, and do not doubt, but I ſhall be able to clear my ſelf, from any thing which you have or can particularly charge me withal; And whereas you pretend that my confidence did ariſe, *becauſe you are tied up by your Promiſe to write no more touching* Amicia. I will aſſure you I received no encouragement thereby, for I do not take you [32]to be ſo great a Bug-bear as you suppoſe your ſelf [Page 32.] to be; And if I had relyed upon your promiſe I had been much miſtaken, but I did very well know what you meant to do, for (beſides what I heard from others) the ſame day my *Reply* was finiſhed, you did write a Letter to me, wherein was your pretended new precedent of *Budeford* and *Suttehal*, and before any part of my laſt Book was printed, I received notice from your ſervant by your command, that *you would print ſome precedents as* Addenda *to your former Book*, but it ſeems that reſolution, as alſo another, (as I was informed) of writing an *Anſwer* in a third perſons name, were both laid aſide, and what you did came out as *Addenda* to your later Book; But how, in ſo doing, you were juſt to your word, I cannot imagine, for, what you did write till the end of the 7. *Page*, did all concern *Amicia:* and, by the ſame reaſon you did write now, you may write alwayes, and ſay you do ſo *as Addenda only* to your ſecond Book.

In your 9 *Page* you again tell me, That I begin my *Reply with an untruth*, [33]becauſe I ſay, that thoſe of our County who [Page 33.] are underſtanding perſons will eaſily diſcerne from ſome of your Omiſſions, that it was something elſe beſides your great love to truth which occaſioned you to Aſperſe your deceaſed Grandmother, and you tell me I might have done well to have ſhewed; To which I anſwer, that I will not reflect upon perſons in print,

but if any one desire privately to know what those Omissions were, if I cannot give full satisfaction of your gross partiality, let me bear the blame: And, I know no reason, since you pretended it was your great love to truth which did occasion you to Write against *Amicia*, but that I might in general termes let the World know it was something else which moved you so to do; and I will appeale to the Reader, whether I did not avoid all offensive expressions in what I said.

In your 10. *Page*, you are also over-captious; For I having found in your *Historical Antiquities* two Deeds made by *Randle* de *Gernoniis* father to *Hugh Cyveliok*, (in the time of which
[Page 34.] *Hugh*, [34] *Raph Mainwaring* was justice of *Chester*) and those two Deeds being directed *Justiciariis*, although I know of none who can tell the name of any more then one of them; I did therefore, lest there should be two Justices in the time of the said *Raph*, in my first Book call him *Chiefe Justice*, because he acted alone, but did withal in my second Book acknowledge, that I had not found that there was then any other Justice in the time of the said *Raph*, and for this, you tell me I should have been more ingenious, and do say, *I do very well know that there was no other Judge of* Chester *at that time*, which being a Negative, it is impossible for me to know; Also, as you may see in *Monasticon Anglicanum*, *Part* 3. *p.* 97 & 226. and in your *Hist. Ant. p.* 130. & 131. there was in the time of the said Earl *Hugh* sometimes two Justices of *Chester*, and sometimes but one; So that there possibly might be another Justice of *Chester*, when the said *Raph* was Judge there: And whereas you give a glance at my vain-glory, by pretending *you are loath to say it was so:* I desire to
[Page 35.] know how I could possibly be vain-glorious therein? [35] since it was full as honourable for the said *Raph* to be *sole* Justice of *Chester*, as to be *Chiefe* Justice in case there were two.

In your 11 and 12 *Pages*, you deny that you said that *Geffrey Dutton* was witness to his own Deed or Deeds, but to the Deeds

of others, and ſay, it was my groſs miſtake in ſaying ſo; But, if any perſons read the 4 and 5 *Pages* of your *Anſwer* to my firſt Book, they may eaſily ſee that you apply the words *Domino Galfrido de Dutton* in that Deed of *Tabley* to that *Jeffrey* de *Dutton* who made the ſaid Deed, and they will alſo find you ſaying, *That in ſeveral other Deeds of the ſame perſon* (meaning ſtill the ſame *Geffrey*) *you dare affirm among the* witneſſes ſubſcribed *he hath five times and more the word* Dominus *omitted, for once that we find it prefixed to his name.* Let the Readers therefore (if they can) find out, how you could imagine his name to be at any time amongſt his own Witneſſes, if you did not take him to be a Witneſs to his own Deeds.

[Page 36.] 36 You alſo in the ſame *Pages* of your *Addenda* ſay, *That if he had been a Knight he would have called himſelf by his Title, Ego* Galfridus *de* Dutton *Miles;* or, *Ego Dominus* Galfridus *de* Dutton *dedi*, &c. But, this is directly contrary to what you did write at the bottom of the 5. *Page* of your ſecond Book; and it is well known, that in very antient times, every one who was a Knight, did not alwayes give himſelf the Title of *Miles* or *Dominus* in his own Deeds, neither had he alwayes the ſame Title given to him by others, which, if occaſion required, I could make to appear.

You alſo tell me, that when I ſay *That Dominus* Galfridus *de* Dutton *witneſs to the other* Geffrey Duttons *Deed of* Nether-Tabley *was his Father*, **it was my groſs miſtake**, *For it was* Geffrey Dutton *of* Chedle. And you alſo ſay, that **there were four** Geffrey Duttons, **two of** Budworth, **Father and Son, and two of** Chedle **Father and Son, much contemporary**; and for the proving of thoſe two of *Budworth* (thoſe of *Chedle* being not there named) you ſend me to [Page 37.] 37 your Book of *Antiquities*, *Page* 226. *there to be informed of what* (you ſay) *you ſee I do not know.* But, if I did not know of thoſe two *Geffrey Duttons*, how could I tell you in the 10. *Page* of my

Reply that *Adam* de *Dutton* had iſſue Sir *Jeffrey*, who had iſſue *Geffrey* who made the ſaid Deed of *Tabley?* or, How could I ſay that *Geffrey* the Father was a Witneſs to that Deed? and, How doth it yet appear that the *Dominus* Galfridus *de* Dutton, who was Witneſs to the ſaid Deed of *Tabley* was *Geffrey Dutton* of *Chedle*, and not the other Sir *Geffrey Dutton* of *Budworth?* For, though the year 1238. be the laſt time you ſay you met with him, yet, as appears in your *Hiſt. Ant. p.* 216. you have not ſeen the Deeds of Sir *George Warburton*, who is his heir-male; therefore the ſaid *Geffrey* might very well live on to be a Witneſs to that Deed. But, whether the ſaid Sir *Geffrey* of *Budworth* the Father was then living or not, one of the *Geffrey Duttons* of *Chedle* was alſo a Knight, as appears in your *Hiſt. Ant. p.* 206. (though you conceal it in your *Addenda* becauſe you would have
[Page 38.] the Reader to believe there was no Sir *Geffrey Dutton* [38]living when that Deed of *Tabley* was made) which will as well ſerve my turn; for, if Sir *Geffrey* of *Budworth* was then dead, then the *Domino Galfrido de Dutton* is in that Deed to be applied to Sir *Geffrey Dutton* of *Chedle;* And whilſt they were both living, whenſoever you find *Domino Galfrido de Dutton* among the witneſſes, it is certainly to be applied to one of the Knights, and when you find *Galfrido* without *Domino*, it is as certainly meant of ſome *Geffry Dutton* that was no Knight.

And whereas you object, *p.* 13. *That Sir* Geffrey Dutton *of* Budworth *muſt needs be dead, or elſe* Geffrey *the Son could not have paſſed away thoſe Lands.* That doth not follow, for I have known more then once, not only Sons in the life-times of their Fathers, but alſo Grandchildren, who have been poſſeſſed of Lands in their grandfathers time; And whereas you ſay that *Margaret* was daughter, but not Daughter and *heir* of *Geffrey Dutton;* I cannot tell how that will appear without the ſight of Sir *George Warburtons* Deeds; Becauſe Sir *Peter Dutton* might
[Page 39] be ſon to a *Geffrey Dutton*, and yet be [39]Brother and heir-male to *Geffrey* the Father of *Margaret.* But be it how it will, ſhe

having the Mannors of *Nether-Tabley*, *Wethale*, and *Hield*, it can be no groſs one, if it be any miſtake at all.

In your 14 *Page*, you would willingly heal an expreſſion in your former Book, by confeſſing it was too ſhort; but, to make amends for this, you now overdoe it; and becauſe you would make us believe that you formerly meant as you now pretend, you ſay, that a little after, you did ſpeak of Knights who uſually ſtiled themſelves thus — *Ego Dominus* A. B. *dedi*, &c. or, *Ego Dominus* A. B. *Miles dedi*, &c. But, whoever can find thoſe words in your *Anſwer*, can find out that which I am not able to do.

In your 16, 17 and 18 *Pages*, you keep a great ſtir about the word *domino*, when it is prefixed to any names in ſubſcriptions, and though you were willing in your laſt Book to call Sir *Raph Mainwaring*, Sir *Roger Mainwaring*, Sir *Thomas Mainwaring*, and Sir *William Mainwaring*, all of them Knights, yet now you are [40]diſſatisfied concerning all but Sir *Thomas Mainwaring*, to whoſe name in a Fine you find the word *Milite* added, and you would willingly inſinuate that the *Dominus Willielmus Mainwaring* was he who was Parſon of *Wernith*, (though without any cauſe as appears by the Deed wherein he is named.) And you ask me, whether I have any Deed of *Raph Mainwaring* Judge of *Cheſter*, with the word *Milite* added, which you well know that I have not, it being much, that I have thoſe Deeds of his which I have, being he was Judge of *Cheſter* ſo long ſince, *viz.* in the time of *Richard* the Firſt; But, I pray you, Why is not the word *domino*, when prefixed to the name of a Witneſs who was not a Clergy-man, good proof that he was a Knight? (eſpecially ſince ſome who are likely to be the moſt skilful in thoſe matters, are of opinion that it is.) And why, if it be not good proof, were you lately more complemental then you are now, and did break your old Rule of *Amicus Socrates*, *Amicus Plato*, &c. in calling *Raph*, *Roger*, and *William Mainwaring* Knights?

[Page 40.]

Or, Why do not you prove the word *domino* prefixed to ſome
[Page 41.] perſons name, [41] before he was made a Knight? Or, to one who was no Clergy-man, and but an Eſquire, at the time of his death? Or, Why doth not the word *domino* prefixed to each of the aforeſaid *Raph*, *Roger*, and *William Mainwaring* prove them to be Knights, as well as it doth prove one of the *Geffrey Duttons* of *Budworth*, and one of the *Geffrey Duttons* of *Chedle* to be Knights? For, you confeſs, *Page* 13. of your *Addenda*, that you do not remember any of them writing *Ego Dominus* Galfridus Dutton, *dedi*, &c. And, Why did not you anſwer the Queſtion which I asked of you in the 16. *Page* of my *Reply?* viz. *If the word* Dominus *do only ſignifie* Maſter *(as you would have it) What is the reaſon, that in ſome Deeds it is only put before the names of ſome of the witneſſes, and not before the names of others? although thoſe other perſons to whoſe names it is not put, many times are Lords of ſeveral Mannors, and perſons of very great Eſtate.* And, What is the reaſon that you do not call all the four *Geffrey Duttons* Knights, as well as two of them? ſeeing in the 13 *p.* you ſay, *You have (if you miſtake not) ſeen them all*
[Page 42.] *ſometimes ſubſcribed with* Domino [42] *prefixed*, but not *any of them writing himſelf*, Ego Dominus, *&c.* Or, How comes it to paſs, that neither of the two Knights did ever write ſo, if what you ſay in your 11th *Page* be true? Sure the *Reader* will eaſily perceive, what ſtrange work you yet make with theſe *Geffreys* and their *Deeds.*

In your 18th *Page* you alſo ſay, *That I faſten upon you another untruth, where I tell you, that you have ſeen the opinion of a Judge under his hand, with Reaſons for the ſame touching* Amicia. But, whether this be an untruth or not, let what you formerly ſent me under your own hand determine, where you name the Judge, and alſo take notice that his reaſons were given under his hand; Let me therefore adviſe you for the future to be more cautious what you write. And whereas you alſo ſay, *That your memory is not ſo bad, but you could remember ſomething of it, or his name;* Let the Reader look in your *Hiſt. Ant. p.* 135. *l.* 3. *and p.* 136.

l. 43. or ſee your words in the 5 *p. l.* 15. *and* 12. *p. l.* 5. printed with my *Defence* of *Amicia,* and he will there find that you did know the Reaſons of the ſaid Judge.

43 And whereas you pretend, *It was impoſſible for you to have alleadged to the two Heralds, the tenth part of what you could have done in ſo ſhort a ſpace;* I ſhall leave that to them, they being both yet living, as alſo whether they have found any thing in your former Books concerning *Amicia,* which they have not heard from you before. And as for your Lawyer of very good note, and good *Antiquary,* you do well in concealing his Name, But certainly he was very unkind that would not furniſh you with ſome Precedents to make good what he ſaid. [Page 43.]

What you ſay in the 20th *Page,* and ſo on to the middle of the 23 *Page,* ſhews clearly, that you are reſolved not to be convinced; For, when at the firſt I proved out of *Monaſt. Angl. Part* 2. *p.* 267. that *Richard Bacuns* Mother could not be *Hugh Cyveliok's* daughter, becauſe it was *Randle* de *Gernoniis,* not *Randle Blundevil,* whom the ſaid *Richard* called Unckle, in regard there was a *William* Archbiſhop of *York,* and one whoſe Name began with an *R.* which was then 44 Biſhop of *Cheſter,* both living in the time of the ſaid *Randle* de *Gernoniis:* but that there was no *William* Archbiſhop of *York,* during all the time of *Randle Blundevil,* nor any man Biſhop of *Cheſter* whoſe name began with *R,* after the ſaid *Randle Blundevil* could be old enough to ſeal a Deed, as alſo, becauſe *Bacuns* witneſſes were contemporary with *Randle* de *Gernoniis;* You in the 54 and 55 *Pages* of your *Anſwer,* do not only ſay that you conceive the *Roll* from whence the Deed in *Monaſticon* was written is miſtaken in *Will.* and *R.* (which was a ſtrange Anſwer) but you alſo ſay, *There was no ſuch Archbiſhop of* York *called* William, *nor Biſhop of* Chefter *whoſe Chriſtian name began with R. both living at one time, either in the time of* Randle Blundevil *or* Randle *de* Gernoniis *that you can find.* But when you perceived [Page 44.]

that I had clearly proved by ſeveral Authors, that a *William* was Archbiſhop of *York*, and that *Roger Clinton* was Biſhop of *Cheſter* in the time of *Randle* de *Gernoniis*, ſo that you could no longer deny the ſame; You now in your *Addenda* would
[Page 45.] willingly avoid the Argument, becauſe the ſaid *William* [45]upon his firſt Election had not the *Pall*, which all that know any thing will eaſily perceive to be a very weak Anſwer; For he was conſecrated Archbiſhop, and had poſſeſſion of the Archbiſhoprick till after the deaths of Pope *Innocent* the Second, Pope *Celeſtine* the Second, and Pope *Lucius* the Second; And if he was reputed Archbiſhop, he would be called ſo, as well in Deeds as otherwayes: And it is no wonder, ſince he was looked upon by many to be the right Archbiſhop, and to be wrongfully ſuſpended by Pope *Eugenius*, (as you may ſee in my *Reply*, *Page* 77. and ſo on to the 87. *Page*) if ſome perſons do name him according to the time of Election, and others according to the time of his Reſtauration, which doth reconcile thoſe different placings which you mention in your 22 *p.*

And whereas you again object, That *Cheſter* was then within the Province of *Canterbury*, not *York;* I anſwered that in my laſt Book, where I told you that the Archbiſhop was not named upon that accompt, but becauſe ſome of the places mentioned in
[Page 46.] the ſaid Deed were [46]within the Province and Dioceſs of *York*, as particularly *Roſington* was, it being within the Weſtriding of *Yorkſhire;* And if that Deed was not directed to an Archbiſhop of *York*, How came the word *Eboracenſi* there? But if you had foreſeen I would have asked you this queſtion, I doubt not but you would have ſaid, *That the word* Eboracenſi *was miſwrit*, as well as the word *Will*, and the letter *R*.

In your 23, 24, and 25 *Pages*, you are diſingenious, and do not recite my Argument aright; For you pretend it only to lie in this, That *Hugh Wac* and *Richard Pincerna* (two of the Witneſſes to *Bacuns* Deeds) were alſo Witneſſes to a Deed made

Anno 1152. which falls in the latter end of the life of *Randle* de *Gernoniis*, whereas whoever will read the 88 and 89 *Pages* of my *Reply*, will find that I named five Witneſſes of *Richard Bacuns*, viz. *Hugh Wac*, *Richard Pincerna*, *William Colevile*, *Thurſtan Banaſter*, and *William* the Chaplain, and alſo did inſtance in five Deeds to which *Randle* de *Gernoniis* was a party, to each of which, one, two, or three of the [47]ſaid *Bacuns* ſaid witneſſes were [Page 47.] alſo witneſſes; and if you pleaſe you may alſo find a ſixth Deed in *Monaſt. Angl. Part* 1. *p.* 987. *b.* and a ſeventh Deed in *Monaſt. Angl. Part* 2. *p.* 260. *b.*

That which you did alleadg concerning two Deeds made at a great diſtance, is nothing like this Caſe; Neither is there any weight in *William Bacun's* being a witneſs to a ſingle Deed of *Randle Blundevils*, for, he might be a young Man when he was witneſs to *Richard Bacuns* Deed, and living to be old might be a witneſs to one of *Randle Blundevils* Deeds, But it is probable he was Son, Grandſon, or other Kinſman of the other *William Bacun;* But, you deal a little fallaciouſly with your Reader, when you ſay it was but Twenty nine years betwixt the death of *Randle* de *Gernoniis*, and the time that *Randle Blundevil* was Earl; For, though that be true, yet it would be a longer time before *Randle Blundevil* could be old enough to ſeal a Deed, for his Mother was but Twenty four years old when he came to be Earl.

[48]What you object, *p.* 26 and 27, concerning the Deed of [Page 48.] Warranty of *Randle* de *Gernoniis*, or concerning *Richard Bacuns* being contemporary with *Randle Blundevil*, is ſufficiently anſwered; For, Why might not the ſaid Deed of Warranty be loſt, as well as many thouſands of other Deeds are? And that *Richard Bacun* was contemporary with *Randle* de *Gernoniis*, I have abundantly proved. And though in your 27 *Page*, you would have *Bacuns* Mother to be *Hugh Cyvelioks* daughter, yet in the 25 *Page* you confeſs, that *it is probable ſhe was a Baſtard*

of Randle *de* Meſchines, but finding that to contradict what you afterwards ſaid, you have ſince the Printing thereof blotted it out of thoſe Books which you have diſpoſed of in theſe parts; And, although I do not ſee but that *Bacuns* Mother might be a lawful daughter of the ſaid *Randle* de *Meſchines*, yet I will not further engage in her defence, but paſs by that, and the courſe language which you repeat at the latter end of your Book.

[Page 49.] [49]I have now done with your *Addenda*, but ſince you have ſo abounded in that particular, I hope you will give me leave to add a word or two to what I have formerly ſaid.

I have heretofore proved that the aforeſaid *Bertred* was but Twenty four years of age in the year 1181, when her Husband died, by which it appears, that ſhe was born in the year 1157. I do alſo find in the Third Part of Mr. *Dugdales Monaſticon Anglicanum*, *p.* 226. that *Hugh Cyveliok* and his Mother *Maude* did give *Stivinghale*, with a Mill next the Park, and ſome other Grounds, to *Walter Durdent* Biſhop of *Cheſter*, and his ſucceſſors, to which Deed *Euſtace* the Conſtable was witneſs; Now the ſaid Earl *Hugh* being not in a capacity to ſeal a Deed until he was One and twenty years of age, and the ſaid *Euſtace* being ſlain (as appears by your *Hiſt. Ant. p.* 266.) in a Battel againſt the *Welſh* in the ſaid year 1157. If the ſaid Deed was made immediately before the ſaid *Euſtace* was ſlain, the ſaid *Hugh* muſt needs be at the leaſt One and twenty years ol-[50]der then his Wife *Bertred*; But, it is very likely that Deed was made ſome years before, *viz.* immediately upon the death of *Randle* de *Gernoniis*, For the ſaid *Randle* died Excommunicate, and *Stivinghale* and thoſe other Lands were given for his Abſolution, and the health of his Soul.

[Page 50.]

But, beſides what is here proved, if you look at the latter end of the *Welſh Hiſtory* put out by Dr. *Powel* 1584, immediately before the Table, you will ſee that the 16 line of the 197 page of the ſaid *Welſh Hiſtory* is miſprinted, and that in the ſaid Page it

ſhould have been Printed thus: **About the ſame time** Hugh **ſon to the Earl of** Cheſter, **fortified his Caſtell of** Cymaron, **and wan** Melienyth **to himſelf.** And you may alſo there find, that the time when the ſaid *Hugh* wan *Melienith* was in the year 1142.

Now that this *Welſh Hiſtory* is of good credit, I hope you will not deny; For, in the 44 *Page* of your *Hiſtorical Antiquities*, you acknowledge, that in theſe *Welſh* [51] matters you chiefly follow the ſame; And Dr. *Powel* in his Epiſtle, as alſo in his Notes on the ſaid Hiſtory, *p.* 206. tells us, That *Caradocus Lhancaruan* is reputed and taken of all learned men to be the Author of what is therein written, until the year 1156. And as you may find in *Voſſius* his Book, *de Hiſtoricis Latinis*, p. 389. and in *Iſaackſons Chronologie*, p. 323. the ſaid *Caradocus* was living when the ſaid *Hugh* wan *Melienith.* [Page 51.]

The only Queſtion therefore is, Of what age the ſaid *Hugh* then was? And becauſe that is uncertain, and that I am willing to reckon ſo, as may be moſt advantageous to you, I will ſuppoſe him to be then but Twelve years old, which is the ſame age that *Silveſter Giraldus*, *p.* 203. ſayes Prince *Lhewellin ap Forweth* was of, when he began to infeſt his Unckles, and is indeed as young, as I have obſerved any to appear in ſuch Martial Affaires. Now, if we ſhould believe that *Hugh Cyveliok* did Marry the ſaid *Bertred* ſo ſoon as ſhe was fourteen years of age, then the ſaid Marri-[52]age would happen in the year 1171. at which time, if *Hugh Cyveliok* was born in the year 1130, and was but 12 years old when he wan *Melienith*, in the year 1142. yet he would be 41 years of Age when he Married the ſaid *Bertred.* It cannot therefore be imagined, that ſo great a perſon ſhould continue unmarryed till he was above Fourty yeares old, or that he ſhould Marry to his firſt Wife, one ſo much different from him in yeares; But, when he had Marryed a former Wife, who dyed leaving him only a daughter or daughters, it is no wonder if in his age, [Page 52.]

he Marryed a young Lady, to the intent he might have Iſſue-male to ſucceed him in ſo great an Eſtate; I hope therefore, though you told me in the 49 *Page* of your *Reply, That you can gather no ſuch quantity of years* in reſpect of *Hugh Cyvelioks* age, *reaſonably to ſuppoſe him to have had a former Wife*, that theſe proofes will ſhew, that there were very many years betwixt them, and that thereupon you will be ſo reaſonable as to believe
[Page 53.] he had a Wife before he Mar-[53]ryed *Bertred;* And, if he had a former Wife, there would be no cauſe to ſuſpect *Amicia* to be illegitimate, if your pretended Precedents had been ſuch as you did untruly ſuppoſe them to be; with which I will conclude what I have now to ſay, when I have ſubſcribed my ſelf

Your Affectionate Coſin

and Servant,

Baddeley,
Feb. 13.
$167\frac{3}{4}$.

Thomas Mainwaring.

Two Books:

The FIRST being Styled

A REPLY

TO

Sir **Thomas Manwaring**'s

Book Entituled,

AN ANSWER

TO

Sir *PETER LEICESTERS'S*

ADDENDA.

The OTHER Styled,

Sir *Thomas Manwaring*'s

Law-Cases Mistaken.

By the said

Sir *PETER LEICESTER*

Anno Domini, 1674.

Printed in the Year,

M, DC, LXX, IV.

THE EPISTLE TO THE READER.

I Am, in the firſt place, to let thee Know, how it comes about that I now write again; contrary to what I formerly both intended and declared in the cloſe of my Anſwer to Sir Thomas Manwarings *defence of* Amicia, [*formerly Printed* 1673, page. 79] *where I ſaid, that* [*I take my leave for ever of this trivial Controverſy:*] *The Reaſon is, becauſe I am now forced unto it by unhandſome Provocations: So that, although my Reſolution then was, to have writ no more about it (eſpecially if he had let me alone;) yet now, contrary to my former intention, I am neceſſitated hereunto in my own Defence; for the removal of thoſe unjuſt obloquies which are ſince caſt upon me: And which others (who know not the Truth) may think me guilty of, without due vindication both of my Self, and the Truth: nay, I am already taxed by him for not being juſt to my Word herein, in his Anſwer to my* Addenda, pag. 32; *though he very well knows, that I did omit many things in the ſame* Addenda *purpoſely in regard thereof: hoping that ſince I forbore to write againſt his* Reply, *onely anſwering ſome new* Accuſations *laid upon me, that he would alſo have ceaſed from writing any more: yet he hath publiſhed another book ſince: and having therein taxed me already of*

not being juſt to my Word, I cannot now incurr a greater cenſure herein, ſhould I vindicate both the truth and my ſelf to the utmoſt, by writing in my own defence as long as I ſhall judge it neceſſary: and I believe, none can juſtly blame me for it.

Wherefore I have now expoſed two ſmall books to thy view for clearing of the Truth; the one intituled — *Sir* Thomas Manwaring's Law-caſes *miſtaken: The other* — A Reply *to Sir* Thomas Manwaring's *Anſwer to Sir* Peter Leiceſter's Addenda: *In which* Anſwer *I find much diſingenuity, in palliating of Plain Truths, but rarely confeſſing any; reſolving not to be convinced, but, like the Angry man in the Comedy,* non perſuadebis etiamſi perſuaſeris.

I doubt not but he will ſay as much of my Reply, but, Reader, thou muſt be Judg: And I ſubmit it to thee freely. If ever I deny a plain Truth or Reaſon, when it clearly appears, then blame me for it: Nothing can be true and falſe both at once, ſimul & ſemel: *wherefore ſtrength of Reaſon, by* Argument *and good* Authority, *muſt guide thee to incline to the one ſide or to the other: becauſe two contrary Opinions in the ſame thing, cannot both be true: Then, Read thoroughly, and judge impartially. So, ingenuous Reader,* Farewell.

Mobberly.
April 14, 1674.

'TO

[Page 1.]

Sir *Thomas Manwaringe*,

Baronet.

SIR,

SInce I ſee, You reſolve not to be convinced of your Opinion, notwithſtanding the plaineſt truth of *Reaſon* and *Hiſtory* produced; but ſeek ſtill to evade the ſame with ſeeming and very unſatisfactory Anſwers, and many impertinent Law-Caſes, which either reach not thoſe former Ages, or are elſe urged altogether impertinently by you, and are not to the point in hand: I have thought good, to ſhew your *Miſtakes* in your late *Anſwer* to my *Addenda;* and by my *Reply*, to [2]pluck off the vizard which diſ- [Page 2.]
guiſeth the Truth.

The matter would ſooner and better be determined by Arguing face to face before learned and judicious men, which would ſooner bring us to the Point, and thereby avoid infinite impertinencies, which (I ſee) by writing do daily ariſe: And it ſeemeth neceſſary for me to print this *Reply*, leſt you ſhould ſay (as in the like caſe you have formerly ſaid *pag.* 55. of your *Reply* to my *Anſwer*) that theſe Reaſons alſo of yours are *unanſwerable:* whereas thoſe other, by you mentioned, were purpoſely omitted by me, as of no great moment to very wiſe men: and was indeed done, that we might not be endleſs in writing.

Wherefore, I have here collected all the material things in

your *Anſwer* to my *Addenda*, where, by way of Reply, I ſhall ſhew all your *Errours* and defects in that *Anſwer*, as followeth: And that very briefly and plainly.

[Page 3.] [3]Page 2. *Of your* Anſwer *to my* Addenda.

Here you ſay, you *cannot but ſmile that I ſtill ſay, the Gift to Geva was ſuch a Precedent*, conſidering how in your *Defence* of *Amicia* pag. 43, 44. *&c.* and alſo in your *Reply* to my Anſwer *pag.* 23, and *pag.* 45, 46. *&c.* you have made it to appear, that it is very uncertain, that *Geva* was a Baſtard, but moſt certain that the gift to *Geva*, was not a Gift in *Frank-marriage*.

My Reply.

You may perhaps ſmile, as puft up in your vain conceit, in denying a plain truth, who is proved to be a Baſtard out of an Hiſtorian contemporary: and therefore to what is ſaid of *Geva* in your defence of *Amicia*, I ſhall refer the Reader to my Anſwer of that Book, *pag.* 33. and ſo onwards to *pag.* 47.

And whereas you ſay, It is moſt certain that the gift to *Geva*
[Page 4.] was not a [4]Gift in *Frank-marriage*, I wonder at it, if you can engliſh *in libero conjugio;* unleſs you think all Readers ſhould be infatuated.

For, ſay you (in your *Reply* to my *Anſwer pag.* 55.), Thoſe arguments of yours which I mentioned *pag.* 44. of my *Anſwer*, and pretended to be anſwered by me *pag.* 45, 46, 47. remain yet in their greateſt ſtrength, and are not at all anſwered by me: nay, the one of them is ſo far from being Anſwered by me, that it is not underſtood by me, unleſs I only pretend not to underſtand it, becauſe I cannot give an Anſwer to it: And you rather think, that to be the truth of the Caſe, becauſe I have not recited your Argument as you did expreſſe it: (what is this deep Argument?) namely, that my Lord *Cook* ſaith in his *Comment upon Littleton, fol.* 21. that theſe words [*in liberum maritagium*] are

ſuch words of Art, and ſo neceſſarily required (in thoſe kind of Gifts) as they cannot be underſtood by words equipollent: And there he gives the reaſon, that theſe words *in liberum* [5]*maritagium* did create an eſtate of inheritance againſt the general Rule of Law: and therefore the Law required that it ſhould be legally purſued: and, to explain this, he alſo ſaid that, If a man give lands to another with his daughter *in connubio, ſoluto ab omni Servitio, &c:* yet, there paſſeth in this caſe but an Eſtate for life: yet for all this I would not believe my Lord *Cook*, if he ſhould have ſaid the words [*in libero Conjugio*] do make but an Eſtate for life. [Page 5.]

My Reply.

To all which I now anſwer: That the Lord *Cook* ſpeaks there, of the Law of theſe later ages; and as the Law was taken in his time: for, if we underſtand it of the ancient Law in *Glanvil*'s time, it is not true; and was not the Law at that time: neither doth the Lord *Cook* ſay, that was the Law in *Glanvil*'s time; or, if he ſhould have ſaid it, none ought to believe it: for we ſee the gift to *Geva, in libero Conjugio*, did convey an eſtate of [6]Inheritance by thoſe very words: and her heirs enjoyed the ſame. And it is ridiculous to ſay the contrary, namely, that theſe words *in libero Conjugio* created but an Eſtate for life in thoſe ancient ages, ſince we ſee *de facto*, that thoſe words did convey an eſtate of inheritance about the later end of *Henry* the *firſt*, or raign of King *Stephen*. [Page 6.]

2. Again I ſay, that in thoſe ancient ages the words *in libero Conjugio*, or *in maritagio* only, ſo as the lands were acquitted from all ſervice towards the chief Lord, were then as good as *in Libero maritagio:* See the words of *Glanvil, lib. 7. ca.* 18. *Maritagium autem, aliud nominatur Liberum, aliud Servitio obnoxium: Liberum dicitur maritagium, quando aliquis liber homo, aliquam partem terræ ſuæ dat cum aliquâ muliere, alicui in maritagium; ita quòd ab omni Servitio terra illa ſit quieta, & à ſe & hæredibus*

ſuis, verſus capitalem Dominum, acquietanda: & in hâc quidem libertate ità ſtabit terra illa uſque ad tertium hæredem, nec interim
[Page 7.] *tenebuntur hæredes inde* [7] *facere aliquod homagium: Poſt tertium verò hæredem, ad debitum Servitium terra ipſa revertetur, & Homagium inde capietur.*

So that, Lands given *in Maritagium, Habendum ſibi & hæredibus ſuis, libere & quiete ab omni Servitio verſus Capitalem Dominum, de me & hæredibus meis;* this was a good Grant in Free-Marriage, by the very words of *Glanvil* in thoſe ancient ages, and was as good as, *in liberum maritagium:* and, *in Conjugio, ſoluto ab omni Servitio, &c.* was then as good as, *in libero Conjugio.* But if the Grant were in theſe Words — *in libero Maritagio:* or, *in libero Conjugio,* then was it as good by the Law, as if the words aforeſaid were expreſſed, and were included therein: nay, *in liberum Dotarium* was as good as either; which I have ſeen uſed in an old *Deed,* made in the raign of *King John,* wherein *Saher de Quency,* Earl of *Wincheſter,* granted to *Robert Quency,* his Son and heir, *ad dandum in liberum Dotarium Hawiſiæ Sorori, Comitis Ceſtriæ, uxori ejuſdem Roberti,* the
[Page 8.] [8] Mannours of *Buckby, Granteſſet, Bradham,* and *Hardwick.* In one of the *Couchir*-books in the Dutchy-Office at *Grays*-Inne, *London.* Tom. 2. *Honor, ſive ſoca, de Bolingbroke.* num. 26. pag. 508. *in liberum Dotarium,* was the ſame as, *in liberum Maritagium:* for, in Domeſday-book, *Dos* is called *maritagium:* Cook upon *Littleton fol.* 31. *a.* and *Glanvil lib.* 7. *cap.* 1. *Dos, quod vulgariter dicitur maritagium.* So that, the words *in liberum maritagium* were not in thoſe ancient Ages ſo ſtrictly required, as in later ages whereof the Lord *Cook* ſpeaketh; nor, were thoſe words ſo ſtrictly then reſtrained, as no other words were equipollent; which the nicety of Lawyers in modern ages tyed up with more ſtrictneſs to it ſelf, as a Term of Art, in thoſe Gifts of *Frank-marriage:* which kind of Gifts are now grown obſolete altogether, and out of uſe: and ſerve now only for *Moot*-caſes.

Nor, do we find any ſuch thing in all *Glanvil,* that, ſuch gifts were then tyed up to ſuch women only, as were of the Donour's

blood, but ra-[9]ther the contrary: For, *Glanvil lib. 7. ca.* 1. ſaith [Page 9.]
that, it might be given to any man with a daughter, or with any other woman whomſoever; without any reſtraint at all: whoſe words yet, you have endeavoured to reſtrain, by the words of ſome Lawyers of later ages: which you cannot juſtly do: for, what the Lawyers of late ages do take for law in their times, is a great *Non ſequitur* to the Age of *Glanvil.*

Nor is it abſolutely true, which the Lord *Cook* doth there ſay, that at this day the words *in liberum maritagium* have no other words equipollent: For then, a deed in Engliſh granting lands in Free-marriage, or a Deed in French *de terres en Frank-marriage*, would be void *Grants:* For, neither of theſe have in ſtrict terms the words [*in liberum maritagium;*] and So, could not create an Eſtate of inheritance in themſelves; contrary to what *Littleton* ſaith, *Sect.* 17. Wherefore certainly he underſtood it of a *Grant* in Latin: and ſo, *Free-marriage*, or *Frank-marriage*, ſeem to be in their kind Terms of Art, Equipollent herein.

[10]But let us now ſee, how you would prove the Gift to *Geva* [Page 10.]
in *Free-marriage*, to be no Gift in *Free-marriage.*

The Reaſons you give in your *Reply* to my *Anſwer pag.* 57. And in your Defence of *Amicia pag.* 49. are theſe.

1. That the words *in libero Conjugio*, do there make but an eſtate for life, becauſe the Lord *Cook* ſaith, that the words *in liberum maritagium* are ſuch words of Art as cannot be expreſſed by words equipollent.

2. That the Deed to *Geva*, did intend no more than an eſtate for life, it running all along in the ſingular number, *Et teneat benè & in pace, &c.* and there being no mention of her Heirs.

3. The Deed to *Geva* is made to her alone, and not to a Husband with her: whereas the Lord *Cook* ſaith, that, one thing incident to *Frank-marriage* is, that it be given, in conſideration of a marriage, either to a man with a Woman, or (as ſome have held) to a Woman with a man.

4. That the Donees [by the ancient [11]Law] were to hold [Page 11.]
freely of the donour to the fourth Degree: and here are no Donees, but one Donee.

To the *Firſt:* You are horribly out, to ſay that, the words *in libero Conjugio* in the grant to *Geva*, did make but an eſtate for life; when we ſee *de facto* that they conveyed unto her an eſtate of inheritance: For the Town of *Drayton* was enjoyed by her heirs, the *Baſſets*, by this very Deed in thoſe very words: and it is apparent, that from the *Baſſets*, ſometime Lords thereof, it gained the name of *Drayton-Baſſet* for diſtinction, as even at this day it is yet called. And it is abſur'd for any man to ſay, that, this Gift to *Geva* is not a Gift in Free-marriage: for, thus it runnes (only I render it in Engliſh) — *Randle*, Earl of *Cheſter*, to *William* the Conſtable, and *Robert* the Steward, and to all his Barons, *&c.* Greeting: Know ye, that I have given and granted unto *Geva Ridel*, daughter of Earl *Hugh*, *Drayton*, with the appurtenances in Free-marriage, even as Earl *Hugh* gave and
[Page 12.] granted the ſame to her in Free-marriage, *&c.* [12]See the Deeds at large in my Book of Antiquities *pag.* 112, 113. Now to ſay, This is not a Gift in Free-marriage, is to ſay, that, A Gift in Free-marriage is not a Gift in Free-marriage: which is very abſur'd: But I ſuppoſe you mean, that this is not a *Good* Gift in Free-marriage, by Law, becauſe the words are not *in libero maritagio*, but, *in libero Conjugio;* for that, the Lord *Cook* ſaith, that no words can be equipollent to theſe — *in libero maritagio:* Whereunto I anſwer, as I did before averr, That the Lord *Cook's* word's are to be underſtood of the Law as it ſtood in his time and in late ages: which are not true, if we underſtand them of the Law in the more ancient ages; as is very evident by this Grant to *Geva*, and alſo by *Glanvil* and *Bracton:* and you ſee, the Lands did paſſe accordingly.

To the Second: The words [Frank-marriage] create an eſtate of inheritance in themſelves by the Common-Law; although it be not expreſly ſaid in the Deed, To hold, to them and their
[Page 13.] heirs; *Littleton* Sect. 17. And [13]therefore the words, *in libero Conjugio* did not need the word [Heirs] to be expreſſed in the Grant: wherefore you do not ſay right, that the deed to *Geva* did intend no more than an eſtate for life: and eſpecially, ſince

you ſee, that-Gift to *Geva* did convey an eſtate of inheritance thereby which did deſcend to her heirs; chooſe whether you think it a good Deed, or a bad Deed.

To the Third: It hinders nothing, though the Deed be made to *Geva* alone, and that it runs in the Singular number: But, ſay you, How can there be a Gift in Free-marriage, where is no marriage at all? and, how can there be a marriage if the man or Woman be alone? It is true, that there can be no marriage, if the man or woman was never married, nor ever ſhould marry: Yet there may be a Gift in *Frank-marriage* to one alone, as you ſee this was made to *Geva* alone, who had been, or was then again married: and ſhe had alſo a former Grant in Free-marriage, which is mentioned alſo in this: And that probably did mention both her and her Husband: [14]But I cannot poſitively affirm it, [Page 14.] becauſe I never ſaw it: but certainly there was ſome reaſon for this later grant by Earl *Randle* unto her, for the conveying of *Drayton* to her and her heirs, or otherwiſe it would never have been made or deſired: and *Bracton* ſaith, *lib.* 2. *cap.* 7. *par.* 3. Land may be given *alicui mulieri ad ſe maritandam:* and if it be granted, *ſibi & hæredibus liberam ab omni Servitio, &c.* then was it a good grant *in libero maritagio.* How will you conſter here *alicui mulieri ad ſe maritandam,* if Lands may not in this nature be granted in marriage to one Perſon alone? The Law was not ſo curiouſly woven in thoſe ancient Ages, as in the Lord *Cook's* time. But to deny, the deed to *Geva* to be no Gift in *Frank-marriage,* were to raiſe a diſpute upon the Deed — Whether this Gift in *Frank-marriage,* be a gift in *Frank-marriage,* or no Gift in *Frank-marriage?* like the Gentleman who would needs diſpute about a Croſſe, & the Queſtion muſt be — Whether that Croſſe, was a Croſſe, or no Croſſe?

To the Fourth. The heirs of the [15]Donee (being included in [Page 15.] the Grant) are all Donees in Law: and ſhall be freed from all homage to the chief Lord, to the fourth degree, by the ancient Law, as both *Glanvil* and *Bracton* do tell us.

All this will not acquit *Geva* from being a Baſtard (nor take

off that Precedent (ſhowing that lands did paſſe with Baſtards in Free-marriage in thoſe more ancient Ages) to the advantaging of the Caſe of *Amicia*, one jot: nor can theſe Bits of Law, ever find out a former wife to *Hugh Cyveliok*, which is the main point: and till this be done, *Amicia* will ſtand convict of Baſtardy for want of Evidence.

The true reaſon why I did not in my *Addenda* meddle with the Anſwering of this point before, and other things, was, becauſe of my former Reſolution declared in the end of my *Anſwer*, where I took leave of this Trivial controverſy for ever: which I did to avoid all further writing between us: but it would not be. For, by a *Reply* you faſtened new Accuſations and falſities upon
[Page 16.] me, and thereby forced [16]me to a Vindication of my ſelf; & thoſe impertinent too, to the Point of the Controverſy between us: And yet for all that, in regard of what I had before declared and intended, I paſſed by ſeveral errors and defects in your *Reply*, as I told you in the cloſe of my *Addenda:* hoping hereby alſo, that it might have put an end to your writing any more, in regard I had firſt ceaſed in that point; and being now only upon my own defenſive part, yet I had in ſome things been defective in my own Defence; (which yet I judged not ſo very material to the point) but this would not do neither: And after this, you have ſince publiſhed another book and forced me to this *Reply*, contrary to my former reſolution and intention, whereunto I am neceſſitated for the removal of thoſe unjuſt obloquies which you have again caſt upon me, and which others (who know not the Truth) may think me guilty of, without the clearing both of my Self and the Truth: Nay in your anſwer to my *Addenda, pag.* 32.
[Page 17.] you have already taxed me for [17]not being juſt to my Word; So that, I cannot now incur a greater cenſure from you herein, though I alter my former reſolution and intention, and write in my own defence ſo long as I ſhall henceforth judg it neceſſary: and I think no man can juſtly blame me for it: And now I proceed in my *Reply* to your *Anſwer* to my *Addenda.*

Pag. 3. *Of your* Anſwer *to my* Addenda.

Here you ſay, that I erre in ſaying that, the wife of *Lewellin* was *Joan*, daughter of King *John;* by *Agatha de Ferrars*, daughter of the Second *William de Ferrars*, Earl of *Darby:* where *pag.* 4, 5. you further prove by comparing the Age of *Bertred*, that *Agatha* could not be daughter to the Second *William de Ferrars* by *Agnes* his Wife.

My Reply.

This is not my errour, if it be an errour: for I only vouch what *Vin-*[18]*cent* ſaith: therefore all rational men will impute [Page 18.] the errour to him, and not to me: and I believe, *Vincent* is miſtaken therein: which he might eaſily be, in taking her to be the daughter of the Second *William de Ferrars. Speed*, in his Hiſtory *pag.* 518, calleth her, daughter of *Robert de Ferrars:* However it is ſaid by our Hiſtorians, that *Agatha de Ferrars* was Paramour to King *John*, and mother to *Joan*, wife of *Lewellin*, Prince of *Wales:* whether ſhe was daughter to *Robert de Ferrars*, or the firſt *William de Ferrars*, Son of *Robert;* it matters not.

All I here look after, is, that *Joan* (baſe daughter of King *John*) was wife of *Lewellin*, Prince of Wales, and mother of *Helene*, wife of *John* the Scot, Earl of Cheſter: againſt which, nothing can be rationally ſaid, and, whether *Joane* was married *Anno Domini* 1204, or 1205. as *Cambden* [in *Shropſhire*] voucheth it out of an old Chronicle of Cheſhire; it matters not: The Church of *England* computes the year of our Lord to begin the 25. day of *March*, and ſo you reckon the date [19]of the Writ to [Page 19.] fall in *anno* 1204: Yet our Ancient Hiſtorians begin the year uſually on the firſt of *January*, commonly called *New years-day;* aud ſo the date of the Writ will fall in *anno.* 1205; as it is in *Cambden:* And it is not a Pin matter, which way ſoever we reckon, nor, whether in the one year, or in the other.

And here I will joyn iſſue with you to the point in hand:— Whether *Lewellin* married *Joan*, baſe daughter of King *John*, or no? I affirm it.

Pag. 6, 7. *Of your Anſwer to my* Addenda.

You tell me here, that, I am guilty of a third error in pretending that King *John* gave the Lordſhip of *Elleſmere, in libero maritagio* with his daughter *Joan:* For the Authors, by me produced, as well as the Record of 6. *Johannis* by you produced (being, the precept to make livery of *Elleſmere*, directed
[Page 20.] to the Sheriffe of *Shropſhire;* dated at *Worceſter* 23. [20]*Martij. ex Rot. clauſo de anno Sexto Regis Johannis; Membrana* 7) do only ſay, that it was given *in maritagio:* And then you ſay, To argue that *Elleſmere* was given *in maritagio; ergo*, it was given *in libero maritagio;* is very irrational: and you diſtinguiſh between them, and ſay, that, Lands may be given *in maritagio* to one that is not of the blood; but, Lands cannot be given in Free-marriage, but with one that is of the whole blood; neither can they be ſo given unleſs the word *liberum* be uſed as well as the word *maritagium:* and ſo, you refer us to *pag.* 39, 40. and *pag.* 56, 57. of your *reply* to my Anſwer.

My Reply.

Here, you would diſtinguiſh between *maritagium* and *liberum maritagium:* and ſay, *Maritagium* is twofold: but do not give the members of your Diſtinction aright: for, a good Logician would tell you that the members of a good Diſtinction muſt be
[Page 21.] [21]oppoſite: and not, as you here diſtinguiſh, *Maritagium eſt duplex; vel maritagium, vel liberum maritagium:* the members are here coincident: for, *liberum maritagium eſt maritagium: Glanvil's* diſtinction is good; *Maritagium eſt, vel liberum, vel Servitio obnoxium:* So that, *maritagium* the *Genus*, comprehends the members, and both oppoſite one to another, as, either

Free-marriage, or not Free-marriage: In his time, there was no ſuch thing, as Free-marriage to be tied up to one of the whole blood, nor yet to thoſe words *in libero maritagio:* this is a Law of a later ſtamp; which I have before clearly proved. *Maritagio* was often in thoſe ages, underſtood for *libero maritagio,* both by Hiſtorians, and in old Deeds, eſpecially where, by the words of the Deed, it was freed from all Service, and therefore your diſtinction here is frivolous.

[22] *Pag.* 7. *Of your* Anſwer *to my* Addenda. [Page 22.]

There you ſay further, that, If the Gift of *Elleſmere* had been given *in libero maritagio* with *Joan* baſe daughter of King *John,* unto *Lewellin;* yet, this would have ſtood me in no ſtead: (why ſo?) becauſe *Cook on Littleton fol.* 21. *b.* ſaith, that, if the Donee in a gift of *Frank marriage,* that is the cauſe of the Gift, be not of the blood of the Donour; yet, there may paſſe an Eſtate for life if livery be made, as in this caſe it was: and then you inſinuate this caſe of *Elleſmere* to be but an eſtate for life, becauſe you read in *Powel's* notes on the Welſh Hiſtory *pag.* 306. and *Mathew Paris pag.* 625, 626, that, though *Eleſmere* was enjoyed by *Lewellin,* yet it was not long enjoyed by his Son *David.*

My Reply.

I wonder you ſhould ſo often bring in ſuch impertinent Peeces of Law: For, I have told you over and over again, that *Joan* (who was the cauſe of the gift) was of the blood of [23] the Donor, [Page 23.] for ſhe was his Baſtard-daughter: and I have elſewhere proved out of *Bracton,* that, in thoſe elder Ages, Baſtards were reputed of the Blood: and now you would inſinuate, this to be but an eſtate for life by a *Circumquaque* of the livery made: And ſee, how fallaciouſly you deal with the Reader, and ſay, it was but an eſtate for life, becauſe it was not long enjoyed by *David:*

Doth not *Mat. Paris* in the place alledged ſet down the deed and Agreement between King *Henry*, and *David*, dated 25. *Hen.* 3? wherein *David* granted *Elleſmere* to King *Henry* and his heires for ever: So that it reverted not to the King as an eſtate for life, as you go about to deceive the Reader; but, by vertue of that ſpecial Deed and Agreement mentioned by *Mat. Paris:* for, without that grant it could not have reverted to the King, becauſe it was an eſtate of inheritance, and not (as you unhandſomely ſuggeſt) an eſtate for life only; for *Joan* was dead
[Page 24.] before this Deed was made, at leaſt four years; and [24] King *Henry* her Brother would have ſeized it as his own right upon her death, if it had been an eſtate for life onely: and *Lewellin* was alſo dead a year before: and what needed this Covenant and Grant from *David* of *Elleſmere*, if it were the right of King *Henry*, before that Agreement made? So that it was certainly an eſtate of inheritance in *Joan:* and whereby you may alſo ſee that the word *maritagio* (mentioned in the Record of 6°. *Johannis*, which you keep ſuch a ſtir about) doth there clearly include an eſtate of inheritance by that word in the Writ of livery touching the lands of *Elleſmere* aforeſaid, and the words of *libero maritagio* could have done no more. So that you are groſly miſtaken herein, and your Law-caſe impertinently urged.

Pag. 8, 9. *Of your* Anſwer *to my* Addenda.

Here you ſay, that, the Deed of *Budiford* and *Suttehele* doth
[Page 25.] not ſay [25] that they were given by King *John, cum Johannâ filiâ ſuâ:* you ſay alſo, that my conceit that *Lewellin* could not have a former wife [to that *Joan*] unleſs ſhe were another daughter of King *John*, is a very wild one.

My Reply.

As to the *Firſt:* It is nothing but a meer cavil: for the words *cum Johannâ filiâ ſuâ* are by common intendment ſo to be un-

derſtood, and are as ſtrongly there implyed, as if they had been expreſſed in the Deed; becauſe *Lewellin* never married any other daughter of King *John*, ſave only the ſaid *Joan*, whereby he might have thoſe Lands in *Frank-marriage* given by King *John* with any other, either daughter, or Kinſwoman.

As to the *Second*, It is a mere miſtake, which you in your wild Phanſy ſuppoſe of me: for I never conceited or ſaid any ſuch a thing: I ſaid that *Lewellin* never married any other daughter of King *John*, ſave only the ſaid *Joan* his Baſtard-[26]daughter: [Page 26.] ſo that *Lewellin* could not have thoſe Lands in Free-marriage with any other daughter of King *John*: I wiſh, I might but live ſo long in health and happineſs, till either you, or any body elſe, could prove it: or yet till you could prove, that *Lewellin* married any other Kinſwoman of King *John* beſides, with whom King *John* gave unto him the Lands of *Budiford* aforeſaid: and you confeſſe *pag.* 9, that *Lewellin* married a daughter of King *John*, named *Joan*; and but one daughter of his: but not that *Joan* which I ſuppoſe: that is as much as to ſay, not *Joan* his Baſtard daughter: then certainly all thoſe ancient Authors by me cited are miſtaken; and whether it be more likely, that theſe all do erre, or you who prove nothing to the Contrary, let the Reader judge. What followes in the ninth Page of your book, is very impertinent to the Point and wild.

[27] *Pag.* 10, 11, *Of your* Anſwer *to my* Addenda. [Page 27.]

Here you go on and ſay, *pag.* 10, that thoſe Authors (cited by me in my *Addenda*) and ſome others do all tell us of Lands given by King *John* to *Lewellin* with his daughter *Joane*; but none of them do ſay, that theſe Mannours of *Budeford* and *Suttehal*, or either of them, were given with the ſaid *Joane*.

2. And then you ſay *pag.* 11. That our beſt Authors who tell us of the Children of *Lewellin* by the ſaid *Joane*, do only name one ſon called *David*, and two daughters; *Marret*, married to *John Bruſe*; and *Gladys*, wife of Sir *Rafe Mortimer*; but none

of them nameth *Hellen:* So that it ſeems, *Hellen* was no daughter of his by the ſaid *Joane.*

My Reply.

To the *Firſt:* I pray you ſee the weakneſs of this Reaſon: for though [28]thoſe Authors knew of thoſe Lands given in marriage with her, namely *Elleſmere,* which they do mention; yet they might not know of theſe other Lands to be given in Free-marriage, namely *Budeford* and *Suttehall:* which yet clearely appears in the Deed of *Lewellin* unto *John Scot:* See my *Hiſtorical Antiquities. pag.* 152.

[Page 28.]

To the *Second:* Thoſe beſt Authors (as you call them) is only the Welſh Hiſtory with *Powel*'s Notes thereon, *pag.* 298, and *pag.* 315. which indeed are pittiful Authorities, and very often groſly miſtaken, as they be here alſo: but though theſe have omitted *Hellen* altogether, yet *Vaughan* in his *Britiſh Antiquities, pag.* 29. tells us of her, out of an old Manuſcript, the words whereof are theſe — *Lewellinus Gervasij filius* [that is, Lewellin ap Iorwerth] *Princeps Walliæ, primò deſponſavit Tanglwyſt, filiam Lhowarch Vychan** (who was Lord of Angleſey) *de qua genuit Griffith &* Gwlades ddu, *quondam uxorem Radulphi de* Mortuo mari: *Poſt mortem* [29]*dictæ* Tanglwyſt, *idem Lewelynus deſponſavit* Johannam, *filiam* Johannis *Regis Angliæ, de quâ genuit* David, *Principem*; *&* Guenliant *uxorem* Johannis Lacy *Comitis Lincolniæ, &* Angharad *primò deſponſatam* Johanni *de* Brewis *Domino de Brechon; poſt cujus deceſſum, deſponſata fuit* Malgoni Vachan *ap* Maelgon *ap* Rees, *& ex eadem uxore genuit filiam quæ maritata eſt* Johanni Scotico, *Comiti Ceſtriæ, qui fuit nepos* Ranulphi *Comitis Ceſtriæ ex parte Sororis ſuæ.* The name of this daughter was *Helene,* as appears by the Deed of *Lewellin: Mat. Paris* alſo, and *Knighton,* do tell us that *John Scot* married the daughter of *Lewellin:* And, that ſhe was daughter of *Lewellin* by the

* *See* pag. ult. *of this Book.*

[Page 29.]

Milles in his *Catalogue of Honour pa:* 387, calleth her *Tanglofta* daughter of *Lloirch ap Brooi* of *Angleſey.*

ſaid *Joane* daughter of King *John*, is proved by the Manuſcript vouched by *Vaughan*. Therefore you are much miſtaken in ſaying, She was no daughter of *Lewellin* by the ſaid *Joane*.

30 *Pag.* 11, 12, *of your* Anſwer *to my* Addenda. [Page 30.]

Here the Summ of what you ſay is this: that, becauſe the ſaid *Lewellin* married the ſaid *Joane* in the year 1204, the ſaid *Joane* could have no child in all likely-hood old enough to marry *John* the Scot: why ſo? becauſe *Knighton pag.* 2430 ſaith, that the marriage of *John* the Scot and *Hellene* was agreed upon before *Randle Blundevil* Earl of *Cheſter* went into the Holy Land, in which year Damieta was taken: and this voyage of Earl *Randle* is by *Matthew Paris* recorded to be in *anno Domini* 1218. And then, if *John* the Scot was married before, it muſt be in *anno* 1217. So that *Joan* in that year could not have any child above twelve years of Age.

2. And then you adde, that though I pretend that *John* the Scot did marry the ſaid *Helene* about the year 1222; yet I do that, becauſe ſhe could not well be marriageable till a-31bout [Page 31.] that time, if her mother had been married in that year, which I falſly ſuppoſed ſhe was.

My Reply.

You here in the firſt place untruly ſuppoſe *John* the Scot to marry *Helene*, *anno* 1217: And you miſtake your Author moſt groſly.

For, *Knighton pag.* 2430 doth not ſay, that the marriage of *John* the Scot was agreed on before Earl *Randle* went into the holy Land: His words are theſe — *Ranulphus*, comes *Ceſtriæ*, *poſtquam concordatus eſt cum Lewelino Principe Walliæ, profectus eſt Ieroſolymam; & capta eſt Damieta à Chriſtianis.*

Here was a Peace concluded with *Lewellin* before Earl *Randle* went to *Jeruſalem:* not a Syllable yet about any Agreement

concerning *John Scot's* marriage: and I acknowledge that Earl *Randle's* voyage was in *Anno* 1218, in which year *Damieta* was taken: for, I find it ſo recorded by *Mathew Paris*, who was an exact obſer-[32]ver of the year, in all tranſactions: but, admit all were true you ſay, Why might not *Helene* be married at the Age of twelve years, ſince you have a Precedent among your own Deeds ſhewing, that *Joane* daughter of *William Manwaring* of *Over-Pever* was married unto *William Legh* of *Baggiley* when ſhe was but five years old? See my *Hiſtorical Antiquities pag.* 217.

[Page 32.]

2. As to the *Second;* You ſpeak untruly of me, to ſay, I pretend the marriage of *John* the Scot with *Helene,* to be about the year 1222, which (ſay you) I did becauſe ſhe could not well be marriageable till about that time: whereas I here proteſt, that I took my Authority for it from *Knighton,* whom I vouched in my Book of *Antiquities pag.* 152. (which I take to be the place you ſpeak of) and that when I writ the ſame I had not any conſideration at all of the time of her mother *Joane's* marriage, which was then altogether unknown unto me, as at that time having no occaſion to enquire after it: which yet you ſay was falſly ſuppoſed by me about it.

[Page 33.]

[33]But for my obſervation of the time of *John Scot's* marriage to be about 1222. it is very truly obſerved by me from *Knighton pag.* 2430: For if we regard the Series or Order of his Hiſtory, it is very plain: although *Knighton* doth not for the moſt part put down the year, but very oft omits the ſame.

Firſt then, obſerve, he there tells us that the peace with *Lewellin* was made before Earl *Randle* went to *Jeruſalem,* in which

1218

year Damieta was taken: now he omitteth the year in the Margent; which yet by *Matthew Paris* is recorded *ſub anno* 1218, when *Randle* Earl of *Cheſter* took that Voyage.

Then immediately follows in *Knighton*—*Hoc anno* (and yet no year put down in the Margent here neither) *Rex* Henricus *incepit novum opus apud Weſtmonaſterium: &* Ranulphus, *Comes*

1220

Ceſtriæ, rediens de terrâ ſancta adificavit Caſtra de Chartley, & Beeſton, & Abbathiam de Deulacres albi Ordinis, &c. Now

the year of the New work of the Kings Chappel at *Weſtminſter*, is alſo [34]Recorded by *Matthew Paris, ſub anno* 1220. [Page 34.]

And then ſoon after, he tells us, that *Alexander* King of *Scotland* married *Joane* ſiſter of King *Henry:* and this alſo hath the year omitted by *Knighton* in the margent: which yet is alſo recorded by *Matthew Paris, ſub anno* 1221. 1221

And then immediately after it follows in *Knighton* — *John Scot* married the daughter of *Lewellin*, Prince of *Wales*, as for a final concord and Peace between *Lewellin* and *Randle* Earl of *Cheſter:* here is alſo omitted the year in the Margent: which yet by the ſeries of his Hiſtory falls in *anno* 1222. 1222

Then it immediately follows thus — *John* King of *Jeruſalem* came into *England* for ſuccour for the holy Land: and this alſo hath no year put down: but *Matthew Paris* records the ſame, *ſub anno* 1223. 1223

So that, if we mark the ſeries of his Hiſtory, as it were digeſted into annals throughout; it ſhows plainly, the marriage of *John Scot* and *Hellen* [35]to be *anno* 1222: which was two years after *Randle* Earl of *Cheſter* was returned back out of the holy Land: and by this marriage was a new and firm Peace as it were eſtabliſhed between *Lewellin* and Earl *Randle;* as a final Ratification of the former Peace made before *Randle* went into the holy Land: [Page 35.]

So then it is clear, that *John* the Scot married *Hellen, anno* 1222. and not as you erroneouſly ſuppoſe *anno* 1217: which Argument of yours is a very weak one in it ſelf (without theſe Proofs) againſt *Hellen's* being daughter of *Joan*, baſe daughter of King *John*.

Page 13, 14, 15, 16, *of your Anſwer.*

And now you come to a fourth Reaſon, which (you ſay) will abſolutely clear the Point, that *Lewellyn* could not poſſibly have given the ſaid Mannours in Free-marriage with his daughter *Hellen*, unleſs they had been given to the ſaid *Lewellin* with a former wife (meaning a former wife before *Joan* [36]the baſe [Page 36.]

daughter of King *John*) and that the ſaid *Helene* was the heir to that former Wife: Why ſo? Becauſe when lands are given in free-marriage, the Husband hath not the inheritance of the Lands, nor ſo much as an eſtate for life therein unleſs he be Tenant by the curteſy of *England:* and I cannot pretend (you ſay) that the Law was differing in this point in elder ages from what it now is: and then you cite my Lord *Cook* upon *Littleton fol.* 22. *a.* and *Fleta lib.* 3. *cap.* 11. and alſo *Bracton lib.* 2. *cap.* 11. and *Glanvil lib.* 7. *cap.* 18. and ſo conclude in your 16th. page, that it is clear that the lands which were given with the ſaid *Helene* to the ſaid *John* the Scot, were given to the ſaid *Lewellin* with a former wife, who was Kinſwoman to King *John* and mother to the ſaid *Helene*, or elſe the Gift to *John* the Scot could not be good: and then you cloſe with a *Circumquâque* of an — *if* the mother of the ſaid *Helene* was dead at the time of the Gift to the ſaid *John Scot*, then *Lewellin* being tenant by
[Page 37.] the curteſy of *England*, and the inheritance being in [37]the ſaid *Helene*, he might paſſe away the Eſtate, *&c.*

My Reply.

One would think now by your words, that you had knockt the matter dead with this Reaſon, which is but a Vizard to ignorant People, and eaſily pulled off by wiſe Men: and (like Rotten Stuffe) will fall in Pieces in the handling: And therefore, to blind the world, you bring in another Peece of Law by the head and ſhoulders (as you conſtantly do, and impertinently) as if you would prove this Point by Law, when you neither do nor can prove it, either by Law, Hiſtory, or Reaſon:

And Firſt, I grant all your Quotations, and what by thoſe Lawyers is there ſaid: But, that is not to the point in hand: for you run upon a falſe Ground, and ſuppoſe *Helene* daughter of a former wife, which I utterly deny, and have before proved to be daughter of *Joane* aforeſaid, the wife of *Lewellin*, and daughter
[Page 38.] of King [38]*John: ſuprâ pag.* 29. And by conſequence, being

daughter of *Joan* who was the cauſe of the Donation, the lands might lawfully paſſe to *Hellen* in Free-marriage according to the Lawyers by you cited: and ſo your Law-caſe herein (which is impertinently urged) is totally out of Doors: Wherefore, all wiſe men may judge, how abſolutely you clear the Point, when you have not a word to the Point: and now I will joyn iſſue with you herein — Whether *Joan* baſe-daughter of King *John* was wife of *Lewellin*, and mother of *Helene*, I or no? I affirm it, you deny it.

Now to prove my aſſertion herein, I have produced *Polychronicon*, *Stow*, *Speed*, *Vincent* upon *Brook*, and may alſo add learned *Cambden* in Shropſhire who citeth an ancient Chronicle of *Cheſhire* for it, & *Daniel*, and *Milles*, and Sir *Richard Baker*, and *Fabian*, who do all call her Baſe-daughter of King *John:* ſome others, only daughter of King *John:* whereby you would now put me to prove it by an Author contemporary, who ſtyleth her baſe-daughter: What though I [39]cannot? She is called ſo [Page 39.] by an Author, who lived near 400 years ago: and the chiefeſt of our modern Hiſtorians do all call her ſo: but you will not be ſatisfied with ſufficient and clear Authority, as in *pag.* 25, 26, of your Anſwer, you urge *Matthew Paris*, and the writ of *Livery de terris* de *Elleſmere*, 6° *Johannis*, which call her daughter only, as an argument that ſhe was therefore no baſtard: nothing was more uſual, than in ancient Authors, & old Deeds, to have ſuch ſtiled daughters without the addition of Baſtard; and this you may ſee clearly illuſtrated in my Book of *Antiquities pag.* 137. whither I ſhall refer the Reader; and ſo can be no Argument of Legitimacy, eſpecially where other Authors do plainly call her Baſtard: And your denying of this, ſhows you to be no great Antiquary, or elſe diſingenuous in making ſo impertinent an Argument to prove a Legitimacy, if you do know it: for, ſuch proofs ſhow her to be a daughter, but whether lawful or unlawful, it is no proof at all.

Again; I argue further, that it appears not at all by any Author or re-[40]cord whatſoever, that King *John* had any more [Page 40.]

daughters called *Joan*, but only two: *Joan*, his legitimate daughter, married to *Alexander* King of *Scotland* at *York*, *anno Dom.* 1221. this is recorded by *Mathew Paris pag.* 313. & I believe you will not deny this: Now this cannot be that-*Joan*, who was long before married to *Lewellin*, *anno* 1204, and was alſo yet living at that time when the ſaid *Alexander* King of *Scotland* was married: and *Paris* in the place aforeſaid calleth *Joan* the wife of *Alexander*, *Sororem Henrici tertij, ſeniorem:* for ſhe was the daughter of King *John* by his wife *Iſabel:* & then being married but *anno* 1221, cannot by any rational man be preſumed to be ſo old as that-*Joan* who married *Lewellyn*, *anno* 1204: wherefore *Joan* the wife of *Lewellin* muſt be another *Joane*, and by ſome other woman beſides his wife *Iſabel:* wherefore it ſtrongly inferrs, ſhe muſt be daughter of King *John* by *Agatha de Ferrars*, as our Hiſtorians do tell us: or elſe muſt be
[Page 41.] proved to be his daughter by ſome other [41]woman, by better proof: and ſo by conſequence was mother of *Helene*, unleſs you can find out a third *Joan* who was another lawful daughter of King *John* by his wife; and married alſo to *Lewellin.* Prove it without *Ifs* and *Ands* (as we ſay), and take it: or elſe ingenuouſly confeſſe, that you cannot prove it, and never trouble a Reader with impertinent Arguments. I am ſure, as yet you have not the leaſt ſyllable proving *Hellen* to be the daughter of any former wife to *Lewellin*, nor yet any other third *Joan* to be another lawful daughter of King *John* (as you ſuppoſe there was, untruly without any ground) neither indeed have you proved the leaſt ſyllable of any third *Joan* at all.

Wherefore I think all indifferent men may ſafely conclude, that *Budiford* and *Suttehall* were given by King *John* unto *Lewellin* in Free-marriage according to the Deed, unleſs you will deny the Deed which is yet extant to be ſeen; and alſo that *Joan* the wife of *Lewellin* was the Baſe-daughter of King
[Page 42.] *John*, and mother [42]of *Helene*, as is clear by Hiſtorians, unleſs any ſhall (as you do) deny all Authority of Hiſtorians: and therefore it is plain that in thoſe elder Ages, Lands did paſſe

with baſtard-daughters in Free-marriage, as well as with others, as we ſee here they did with the ſaid *Joan.*

Page 17, 18, *of your* Anſwer *to my* Addenda.

Here you tell me, that I erre a fifth time, in ſaying, that *Joan* the wife of *Robert de Audley* was the ſame *Joan* who was wife to *Lewellin.*

Reply. I erre not: *Vincent* affirms it, and citeth a Record of *Clauſ.* 14. *Hen.* 3. for it: and why ſhould you, or any other, ſuſpect that either *Vincent* or the Record erreth herein?

Object. Becauſe (ſay you) it is impoſſible that *Joan* daughter of King *John* by *Agatha*, could be wife to *Lewellin*, in *Anno* 1204.

Reply. But this impoſſibility, as you apprehend, is out of a falſe ſuppoſition: for here, you referr us to what [43]you have [Page 43.] before ſhewed: which (as I take it) is in your 3, & 4, *pages:* which I have alſo before Anſwered *ſuprà, p.* 17, 18. for I agree with you, that probably *Vincent* is miſtaken in ſaying *Agatha* was daughter to the ſecond *William de Ferrars:* and therefore that impoſſibility is removed: for I believe, ſhe was either daughter of the firſt *William de Ferrars*, which *Vincent* might eaſily miſtake; or elſe daughter of *Robert de Ferrars*, as *Speed* ſaith ſhe was: but, that *Joan* was daughter of *Agatha de Ferrars*, nothing is, nor can be ſaid by you againſt it: it is no matter whoſe daughter *Agatha* was, as to the point in hand.

Obj. And then you further aske, how can this *Joan* wife of *Robert de Audly* be the ſame *Joan* who was wife to *Lewellin*, unleſs ſhe had two Husbands living at one time? and how can *Vincent* ſay, that ſhe was remarried to *Audly* after *Lewellin's* death; who dyed not, till the 24 of *Hen.* 3. 1240.

Rep. To this I have told you in my *Addenda*, and now tell you again, that, I believe *Vincent* is miſtaken in ſaying it was after the death of *Lewellin* that ſhe was remarried to *Audley:* [44]But, I tell you alſo, that it ſeemes to me, that ſhe was divorced [Page 44.]

from *Lewellin:* of which I gave you ſome Probability by circumſtances vouched out of *Mathew Paris*, and *Knighton:* and if So, ſhe might be married again in *Lewellin's* life-time, and yet have but one Husband at a time neither: That, great Perſons uſually married again after a divorce in thoſe ages: See a Precedent of *Randle* Earl of *Cheſter* & *Conſtance* his wife, in my *Book of Antiquities pag.* 144, & 146. where both Parties married again after their Divorce, and in the life-time of each other.

And if ſhe married *Audley anno* 14. *Hen.* 3. then is it a ſure Argument, that ſhe was divorced: And whether ſhe were ſo married or no, *anno.* 14. *Hen.* 3. let the record vouched by *Vincent*, be the Judge.

Obj. But, in Page 18 of your *Anſwer* to my *Addenda*, you object againſt a ſuppoſition of a Divorce, thus —— how can we think a Prince of *North Wales*, and a daughter of King *John*, could be divorced, and both of them marry again in their life-time, and no Writer take notice of it?

[Page 45.] [45]*Rep.* Yes, very well: for, if I might Anſwer it with another Queſtion, how many ſuch like occurrences are daily found out by Deeds and Records, which never any Hiſtorian (that we know of) hath mentioned? and yet we find ſome dark Steps of this in ſome Hiſtorians.

Obj. Again page 20, you ſay, that, if I would have added further, what is ſaid in the Welſh-Hiſtory *pag.* 293, *ſub anno* 1237 — Then dyed *Joan*, daughter of King *John*, Princeſs of *Wales*, and was buried on the Sea-ſhore within the Ile of *Angleſey* at *Lhanuaes*, as her pleaſure was: where the Prince did build a houſe of Barefoot-Fryars over her grave: this (ſay you) would have given ſatisfaction, that ſhe was never divorced: becauſe certainly (as you ſuppoſe) the Welſh-Hiſtory would not have then called her Princeſs of *Wales*, nor the Prince have built that houſe over her.

Rep. I think, it would have given but little ſatisfaction in that Point: you know well, that a woman ſhall not loſe her place or

[Page 46.] Title, though ſhe [46]marry below her Quality: was not Queen

Catharine, who married *Owen Tudar* in her Widowhood, called uſually Queen *Catharine*, notwithſtanding that marriage? And as to the building a houſe over her Grave, it was no great matter for the Prince to do, who had been formerly his wife, in regard of her Quality: And ſuppoſing a divorce, it poſſibly might be more his fault than hers; and ſo with ſome remorſe might ſhow ſome action of kindneſs, at laſt.

Pag. 21. *Of your* Anſwer *to my* Addenda.

Here you make an objection againſt your Self, and ſay; that though *Joan* the wife of *Lewellin* was not the baſe-daughter of King *John* by *Agatha*, yet it is likely ſhe was his baſe-daughter by ſome other woman, becauſe of thoſe Authors by me cited to that purpoſe.

Whereunto you Anſwer firſt, that it is nothing to the caſe of *Amicia*, whether the ſaid *Joan* was a Baſtard or no, as you before have proved.

47 2. It doth not yet certainly appear to you, that ſhe was ſo: for, though thoſe Authors [by me cited in my *Addenda*] and ſome others, do ſay, ſhe was a Baſtard; yet they are not much to be regarded: why ſo? becauſe *Polychronicon* was a more ancient Hiſtory than any of the other Authors which I have taken notice of, and yet the Author thereof dyed 1363, which was 159 years after *Lewellin* had married the ſaid *Joan*. [Page 47.]

My Reply.

To the *Firſt:* If this be nothing to the caſe of *Amicia*, I pray you, what is? Your only Argument that *Amicia* was no Baſtard, is, Becauſe ſhe had Lands given with her *in libero maritagio:* for you take your ground-work from the Common-law of later Ages (which yet is a falſe ground of the Law taken in thoſe elder Ages) that lands could not paſs with a Baſtard-daughter *in libero maritagio*.

[Page 48.] Now then, if *Joan* be a Baſtard-daughter, and had lands given unto her *in libero maritagio*, in thoſe elder [48]Ages, as is by me before clearely proved, both by *Lewellin's* own Deed, made 1222 (wherein the other former Deed of King *John's* is plainly mentioned;) as alſo by ſeveral of our Hiſtorians confirming that ſhe had other lands *in maritagio* likewiſe, and nothing at all Solidly by you proved to infring theſe Authorities; then muſt it needs follow, that lands paſſed *in libero maritagio*, in thoſe more ancient Ages, with Baſtards: and ſo your chief Argument quite overthrown, which you bring to uphold *Amicia* from being a Baſtard: And yet you ſay, it is nothing to the Caſe of *Amicia*, whether the ſaid *Joan* was a Baſtard, or not.

2. To the *Second:* If you deny the Authority of Hiſtorians, then you muſt needs yield up the Cauſe, for, this being a Queſtion of Hiſtory, whether Baſtard or no Baſtard, & not of Law, & the Precedents of the Law of thoſe Ages now contrary to what you alledge, and cannot therefore be ſupported by Law, it muſt needs be tryed by Hiſtorians, or Records, or no Way.

[Page 49.] [49]And for what you urge, that the Author of *Polychronicon* dyed above 150 years after that marriage, it is certainly a weak Reaſon to infring his Teſtimony, who lived above 350 years ago; and might very well receive that truth from others, who did know it: as other Hiſtorians do convey from time to time many things even to our own Age: ſome taking notice of one thing, and ſome of another: and ſome not regarding at all, whether Children be Baſtards or no Baſtards: which thing if by Hiſtorians it had always been carefully and diligently recorded from time to time, it would have brought more things to our Knowledge, then now we can poſſibly know.

Pag. 22, *&* 23, *Of your* Anſwer *to my* Addenda.

Are all impertinencies, and not worth the taking notice of: For it only reckons up the wives of King *John.*

50 *Pag.* 24. *Of your Anſwer to my* Addenda. [Page 50.]

The only Queſtion then will be (you now ſay) whether *Lewellin*'s wife was King *John's* legitimate daughter by his wife *Hawiſe:* and if ſhe was, ſome of our Authors taking notice but of two daughters named *Joan*, which the ſaid King had, did thereupon miſtake *Joan* the wife of *Lewellin*, for *Joan* the wife of *Robert de Audley*, and ſo did miſlead ſeveral of our late Authors.

My Reply.

That *Lewellins* wife was not King *John's* legitimate daughter by his wife *Hawiſe*, it is out of Queſtion: *Hawiſe* had no child at all by the King: and, I believe no body but you, would make it a Queſtion: and, for the miſtake, which you would fain ſuppoſe to be made by ſome of our Hiſtorians to miſlead others, it is ſo ridiculous that another would be aſhamed to own it: it is
51 not fit to be put down, nor worth an Anſwer: and ſo you would [Page 51.] ſuppoſe three *Joans;* one to *Lewellin*, another to *Robert de Audley*, and another you cannot deny married *Alexander* King of *Scotland:* But how will all theſe be proved? ſure, you never expected this Book of yours to be read by Judicious Perſons.

Pag. 25, 26. *Of your* Anſwer *to my* Addenda.

Mathew Paris, *Knighton*, and others (you there tell us) do call the wife of *Lewellin*, daughter of King *John*, without the Addition of Baſtard: and therefore muſt be ſuppoſed to be a lawfull-daughter.

My Reply.

If theſe had called her *Lawfull-daughter*, you had ſaid ſomething to the matter: But other Hiſtorians tell you, ſhe was a Baſtard-daughter, theſe call her daughter, but whether Baſtard

[Page 52.] or no Baſtard, they ſay not: [52]which is no proof at all for legitimacy: ſhe is called daughter, *ergò* ſhe was a lawfull daughter: See the weakneſs of the Argument: you oft run upon this ſtrain: See more of this, *ſuprá pag.* 39.

Pag. 27, 28, 29, 30. *Of your* Anſwer *to my* Addenda.

Theſe are all impertinencies: only *Pag.* 30 you ſay, that you ſee no Reaſon to conclude *Joan* to be a Baſtard, until it be proved that ſhe was ſo, by ſome Record, Deed, or Good Authority who lived in that Age: and then you adde that it is not material to the caſe in hand, whether the ſaid *Joan* was a Baſtard or not, becauſe all the Gifts I mention in my *Addenda* are either not Gifts in *Frank-marriage*, or elſe not given to the ſaid *Lewellin* with the ſaid *Joan*.

My Reply.

In the firſt place, I ſee; you reſolve not to be convinced: But
[Page 53.] though you [53]be ſo diſingenuous, as not to credit other good Proof of *Authority* and *Reaſon*, yet other Judicious and indifferent Perſons will and ought to ſubſcribe to Reaſon. And for what you alledge againſt the Gifts of *Frank-marriage* in my *Addenda*, theſe are but your own Words, and are not more weighty for that, without juſt Proof: But I have anſwered this before, *pag.* 11, 12, 13, 14.

Page 31. *Of your* Anſwer *to my* Addenda.

Here you ſay, that, you did in your former Book give me ſome Reaſons, why the words of *Glanvil* did not prove what I ſuppoſed they did, and in the 38 and 39 pages of your Reply did tell me how I had left them unanſwered; and that *Glanvil* did not ſay, that lands might be given with any woman *in liberum maritagium*, but only *in maritagium*: and yet, I had

the confidence after all this again, to father on Mr. *Glanvil* what he never either meant or ſaid.

[54] *My Reply.* [Page 54.]

Now, let us ſee the words of *Glanvil, lib. 7. cap.* 18. Whether he doth not ſay that, Lands may be given with any Woman *in liberum maritagium:* his words are theſe — *Maritagium, aliud nominatur liberum, aliud Servitio obnoxium: Liberum dicitur Maritagium, quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliquâ muliere, alicui, in maritagium; ità quod, ab omni Servitio terra illa ſit quieta,* &c.

So then; any man may give part of his land to any man with any woman in marriage, ſo that it be quit from all Service, *&c.*

But, *Glanvil* ſaith, that, Lands ſo given *eſt liberum maritagium:*

Ergo, Glanvil ſaith, Lands may be given with any woman, *in liberum maritagium.*

Now let the Reader Judg, Whether I, or You, have the greater confidence in affirming an untruth: and I ſaid in my *Addenda,* and truely too, [55] that you had endeavoured to reſtrain *Glanvil's* words [*cum aliquâ muliere*] but you could not juſtly do it: nay, the word *in maritagio,* both in *Glanvil,* Hiſtorians, and old Deeds, ſeems not rarely to be underſtood for *libero maritagio.* See more hereof, *ſuprâ pag.* 21. [Page 55.]

Now we come to your Anſwer touching the Accuſations, Untruths, and Abſurdities which you fathered upon me in your former *Reply,* and do here ſeek to palliate: which yet are nothing to the point of the controverſy between us.

Pag. 32, *Of your* Anſwer *to my* Addenda.

Here you tell me of ſome Reports of what I intended to do, before I put out my *Addenda:* and, when the ſaid *Addenda* were put out, all, till the *7th* page did concern *Amicia:* ſo that

I was not juſt to my word in my former *Anſwer:* and by the ſame reaſon, I might write always, and ſay I do ſo, as *Addenda* thereunto.

[Page 56.] [56] *My Reply.*

As to the Reports, whatſoever you were told by any Perſon whomſoever; I never intended any other then what I did put out: which were thoſe *Addenda* to my Anſwer: But thoſe were only ſome few Precedents, which I had omitted in my *Anſwer;* and whereof I gave you notice, before your *Reply* was publiſhed: but your *Reply* comming out before my *Addenda* were Printed, I found in your ſaid *Reply* ſome unjuſt Accuſations and Abſurdities caſt upon me: and ſo added further therein a Juſtification of my ſelf from thoſe unjuſt aſperſions in your ſaid *Reply* whereunto I was neceſſitated in my own Vindication: wherein yet I purpoſely omitted many other things in regard of my Word, as I told you in the very cloſe of my *Addenda:* And now in your *Anſwer* you tax me for not being juſt to my word, and have aggravated other matters by another book: ſo that I cannot now incur a
[Page 57.] [57] worſe cenſure by you, though I alter my former reſolution & ſhall Write on in my own Defence as long as I ſhall judge it neceſſary, as I have already before in this Book told you.

Pag. 33. *Of your* Anſwer *to my* Addenda.

Here you tax me of Partiality: and did it, that you might let the world know, that it was ſomething elſe beſides love of truth, which made me write what I did touching *Amicia.* And here you appeal to the Reader, whether you did not avoid all offenſive expreſſions: this is all your Anſwer here, as to that aſperſion of yours: which I have before touched in my *Addenda.*

My Reply.

As to what you ſuppoſe of my Partiality (whereof I have been

lately informed, that you have told it to others) perhaps you might judge o-[58]therwiſe, if you knew all circumſtances: but [Page 58.]
eſpecially that when I writ that Pedegree, which was long time ago, even about the year 1654, preſently after the death of the laſt Perſon therein named, the truth (of what you ſuppoſe I ſhould have inſerted) was at that time altogether unknown unto me: But you will ſay, I had time enough to have informed my ſelf before my Book was Printed: which yet I never intended to Print, till the very time it was Printed: and that was but by Accident neither: Nor could I ſo perfect it on a ſodain, as you or others might perhaps expect: ſo that I have omitted the laſt deſcent and iſſue of ſome other families, as well as that: which were yet leſs material than thoſe of former ages: in regard thoſe of this laſt age will more eaſily be found out by Poſterity, and are now known to every one.

And admit I were Partial never ſo much, in what you charge me with, yet I hope what I have written you find it impartial to all, ſo far as [59]I go and do know: would this cure your uncivil [Page 59.]
Expreſſion towards me in another thing? you ſay, I do but pretend unto Truth touching *Amicia*, and that it was ſomething elſe beſides love of truth (which you ought in clear dealing to have expreſt what that ſomthing was, that ſo I might better Anſwer for my ſelf or confeſſe my errour) which moved me to place *Amicia* in that order in my Book, as I have done: The Sum in Engliſh without mincing is all one, as if you ſhould have ſaid thus. — You are Partial to another, but here you do but pretend to truth: for it is not truth that moved you but ſomthing elſe: I ſay, that it was only Truth that moved me, and that what I have writ is according to the dictate of my conſcience to the beſt of my Judgment: no, ſay you, I do but pretend to truth, I do not ſpeak the truth herein according to my Conſcience, it was ſomewhat elſe that moved me to it, beſides truth: ſee here then, the one of us muſt now ſpeak an untruth: and ſo having [60]ſaid [Page 60.]
enough of this, I refer it to the Reader, whether that expreſſion was civil and without offence, which you ſay you did now avoid.

Page 34. *Of your* Anſwer *to my* Addenda.*

Here you come to excuſe an errour and ſay, that you called *Raufe Manwaring* Chief Juſtice of *Cheſter*, becauſe you find in my Hiſtorical Antiquities pa. 160, and alſo in other places, there were in the time of *Hugh Cyveliok*, ſometimes two Juſtices of *Cheſter*, and ſometimes but one.

My Reply.

I ſhould be glad, if you would ſhow me any ſuch a Precedent, wherein two juſtices of *Cheſter* were in that Age mentioned to be ſo, both at one time together: I deny not, but ſometimes the Earls of *Cheſter* in thoſe ages might direct their Deeds to their officers ſometimes in the ſingular number, and ſometimes in the Plural: as thus —— *Hugo comes Ceſtriæ, conſtabulario, Dapifero,* [Page 61.] *Juſticiario, Vice-comiti, & omnibus Baronibus ſuis, &c,* [61] and ſometimes in the Plural number thus —— *Hugo Comes Ceſtriæ, conſtabulario, Dapifero, Juſticiarijs, Vice-comitibus, & omnibus Baronibus, &c.* But this is farr from Proving either two Judges, or two Sheriffs at one time, and are here to be underſtood ſucceſſively, or with their Deputies under them; as might happen to the Sheriffs oft, but very rarely to the Juſtice: for I have obſerved that generally in thoſe ages the Juſtice is for moſt part put in the Singular number [*Juſticiario*]: for then they executed their places themſelves, no Power being given to them in thoſe ages to make or Conſtitute a Deputy (by commiſſion) at pleaſure, as we have now, and in theſe later ages, hath been uſually done: yet poſſibly upon an emergent occaſion, the ancient Earls might conſtitute another Judge for the Preſent in the abſence of the other to execute the place for a time, and ſo change them as oft as was thought good: But never ſhall we find two Judges executing that office at one time together in thoſe Ages, [at *Cheſter*] [Page 62.] [62] that ever I could yet meet withall.

Wherefore here is a great diſingenuity, and a Pitifull Shift to

palliate a plain errour, and will eaſily appear to all Judicious Antiquaries.

Page 35, *of your* Anſwer *to my* Addenda.

Here to make good another untruth you faſtened upon me in your former Reply, pag. 9. namely, that I ſaid *Geffrey Dutton* was a witneſs to his own Deed (which I never did ſay) you would now make it good out of my own words which are theſe: — pag. 4, 5, of my *Anſwer* to the Book of your *Defence of Amicia:* Several other Deeds I have ſeen of the ſame Perſon, wherein I dare affirm among the Witneſſes ſubſcribed, he hath five times and more the Word *Domino* omitted, for once that we find it prefixed to his name.

From theſe words of mine, you now tell me in your *Anſwer* to my *Addenda*, let the Readers (if they can) find out, how I could imagine his name to be at any time amongſt his own [63]Wit- [Page 63.] neſſes, if I did not take him to be a Witneſſe to his own Deeds.

My Reply.

Therefore that I may at once clear this Cavill of yours, you miſtake the ſence of my words, contrary to what I underſtand them: When I ſay, that I have ſeen ſeveral other Deeds of the ſame Perſon, I mean and underſtand ſeveral other Deeds touching the ſame Perſon: for the word *(of)* is uſed many times for *concerning*, as of or *concerning* the ſame Perſon: the *Latine* will demonſtrate the word plainer, as *de illo*, that is, of him or concerning him: whereas when it is to be underſtood as you would have it, the *Latine* ſaith, *Varias ejuſdem Perſonæ Chartas:* But the Engliſh word *(of)* will bear it in either ſence: and by the words following, if you had not been too Captious, you might eaſily know my meaning. And ſo much of your unjuſt Calumny of me: ſee the reſt in my *Addenda*, Pa. 11, 12.

[Page 64.] [64] *Page* 36. *Of your* Anſwer *to my* Addenda.

Where you tell me, that what I ſaid in my *Addenda pag.* 11; namely, that if he had been a Knight, he would have called himſelf by his *Title*, as *ego Galfridus de Dutton, miles:* or, *Ego Dominus Galfridus de Dutton, dedi, &c.* But this is directly contrary to what I writ in the bottom of the fifth Page of my Second book.

My Reply.

I ſay thoſe words are not contrary to what I writ in the bottome of the ſaid 5. Page: for in that Page I ſpoke Principally of the word *Dominus* as it was uſed for a *Lord of a Mannour*, and was always joyned with another Word, as *Dominus Moaldiæ:* and is to be underſtood with an exception alſo of Knights, for thoſe alſo uſed the word *Dominus* but joyned it to their name, as, *Ego Dominus, A. B. dedi, &c.* even in their own Deeds,
[Page 65.] [65] when they were Parties to the ſame: whereof you may ſee I ſpake in the 7. Page following: ſo that all may ſee, how you cavil about nothing.

Page 37. *Of your* Anſwer *to my* Addenda.

Here you would fain Palliate another Groſſe Miſtake of your own in your former Reply, where you ſaid that *Domino Galfrido de Dutton* (one of the Witneſſes to the Deed of *Geffrey de Dutton* to his daughter *Margaret* of the Mannour of *Nether-Tably*) was Father of *Geffrey de Dutton* Party to the ſaid Deed: which you ſeek to do, firſt in ſaying that I have not ſeen Sir *George Warburton's* Deeds, and therefore the father might well live on to be Witneſſe to that Deed.

2. In ſaying that one of the *Geffrey Duttons* of *Chedle* was a Knight, for which you cite my Book of *Antiquities pag.* 206, though I conceal it in my *Addenda:* which will ſerve your Turn,

you ſay, becauſe I would have the Reader to believe that there was [66]no Sir *Geffrey Dutton* living when the Deed of *Tabley* was made: and if Sir *Geffrey of Budworth* was then dead, then that *Domino Galfrido de Dutton* in that Deed muſt be applyed to *Dutton of Chedill:* for certainly *Domino Galfrido de Dutton* muſt be applyed to one of the Knights. [Page 66.]

My Reply.

I never ſaw ſuch Shuffling and cutting (as I may ſay) as you here make to avoid a moſt Palpable groſſe Miſtake of your own, which yet in your *Reply* you endeavoured to have charged upon me, about that *Domino Galfrido de Dutton:*

As to the firſt Reaſon: becauſe I have not ſeen Sir *George Warburton's* Deeds, *ergò* Sir *Geffrey Dutton* the Father might live on very well to be a Witneſſe to his Son's Deed of *Nether-Tabley:* what ſtrange and wild Reaſon is this? if you Speak of an Abſolute poſſibility, it might be ſo: and ſo it might be, if I had ſeen all his, and all other men's Deed's: But I have Deeds [67]of my own, Probably demonſtrating *Geffrey Dutton* ſon of *Adam Dutton,* to be dead before this Deed of *Nether-Tabley* was made, long time. [Page 67.]

To the Second: I confeſſe, I do call one, Sir *Geffrey Dutton* of *Chedil,* in my book: but I call him not Sir *Geffrey Dutton* of *Chedill* Knight, as you alledg, nor doth he in my Authority there vouched write himſelf, *Ego Dominus Galfridus de Dutton:* But in *Hamon de Maſcyes* Deed unto him, he is called *Domino Galfrido de Dutton,* which is that Deed which is cited by me in my book: which you ſay I do conceal in my *Addenda,* becauſe I would have the Reader to believe, that there was no Sir *Geffrey Dutton* living at the time when the Deed of *Nether-Tabley* aforeſaid was made: My words in my *Addenda* are *pag.* 13, — All theſe *Geffrey Duttons* (if I miſtake not) I have ſeen ſometimes ſubſcribed with *Domino* prefixed: but not any (that I remember) writing himſelf thus — *Ego Dominus Galfridus de Dutton, dedi,*

[Page 68.] *&c.* And then for your aſſerting certainly, that *Do-*[68]*mino Galfrido de Dutton* muſt be applyed to a Knight, perhaps it may ſometimes, but not always: this the *Logicians* call *Petitio Principij*, or a begging of the Queſtion: but what all this is to the Point of clearing your ſelf of the Groſſe abſurdity aforeſaid, I know not: I am ſure it argues much diſingenuity by Juſtifying your errour, without a juſt ground or reaſon.

Page 38, 39, *of your* Anſwer *to my* Addenda.

Here you ſay, though I told you that *Margaret* was daughter, but not daughter and heir of *Geffrey Dutton*, as you alleaged in your former Reply; yet you cannot tell, how that will appear without the ſight of Sir *George Warburtons* Deeds; becauſe Sir *Peter Dutton* might be ſon to a *Geffrey Dutton*, and yet Brother and heir-male to *Geffrey* the Father of *Margaret:* but then you adde, it can be no Groſſe one, if it be any miſtake at all.

[Page 69.] [69] *My Reply.*

Every man cannot but now ſee a conſtant diſingenuity, and an opinionated reſolution in you againſt truth it ſelf; or to whatſoever I ſhall ſay, right or wrong. Though you partly acknowledge this a miſtake with an *if*, yet you will extenuate it, not clearly and ingenuouſly confeſſe it: which indeed you do all along through the whole courſe of your Book.

My own Deeds do illuſtrate this, if occaſion were to produce them, as clear as the Sun at noon-day: and that Sir *Peter Dutton* Knight (whom I find ſeveral times ſo ſtiled) was not only heir, but ſon alſo to the ſame *Geffrey Dutton* who gave *Nether-Tably* to *Margaret* his daughter. But of this enough.

Page 39. *Of your* Anſwer *to my Book of* Addenda.

You would here alſo Beſpatter me with a falſity, and do ſay,

becauſe I [70]would make you believe that I formerly meant as I now pretend, that I did a little after Speak pag. 14, Of my Addenda of Knights who uſually ſtiled themſelves thus — *Ego Dominus A. B. dedi, &c.* or, *Ego Dominus A. B. miles dedi, &c:* But, whoever can find thoſe words in my Anſwer, can find out that which you are not able to do. [Page 70.]

My Reply.

I confeſſe thoſe words are not in my Anſwer expreſly: But what I put here by *A. B.* are in my Anſwer pag. 7. inſtanced in, by your own Anceſtours thus — *Ego Rogerus*, or *Ego Willielmus Manwaringe miles:* Nor did I well, though my inſtance be to the ſame Purpoſe, to vary a Tittle from the inſtance in my Anſwer: becauſe I referred to my Anwſer: and it is a negligent Errour.

[71] *Pag.* 40, 41, *of your* Anſwer *to my* Addenda. [Page 71.]

Where firſt you ask me, why *Domino* prefixed to the name of a Witneſſe (who was not a Clergy-man) is not a good proof that he was a Knight? eſpecially ſince ſome, who are likely to be moſt skilful in thoſe matters, are of Opinion that it is:

2. You again ask me, why I was more complemental in my Anſwer, then in my Addenda, in calling, *Raufe, Roger*, and *William Manwaring* Knights?

3. Why do not I prove the word *Domino* prefixed to ſome Perſons names, before they were made Knights? or to one, who was no Clergy-man, and but an eſquire at the time of his death?

4. Page 41. Why doth not the word *Domino* prefixed to the names of *Raufe, Roger*, and *William Manwaring*, prove them to be Knights, as well as it doth Prove two of the *Geffrey Duttons* to be Knights?

[72] 5. Why did not I anſwer your Queſtion in your Reply pag, 16, if the word *Domino* do only Signify Maſter? why is it put [Page 72.]

before the names of ſome Witneſſes, and not of others? although other Perſons to whoſe names it is not put, are many times Lords of a greater eſtate.

6. Why I doe not call all the 4 *Geffrey Dutton's* Knights, as well as two of them?

My Reply.

To the firſt, I Anſwer; that, as ſome skilfull men are of opinion, that *Domino* prefixed in ſubſcriptions of Witneſſes in thoſe elder Ages under *Hen.* 2. *Rich.* 1, and King *John*, ſuch were always Knights, where it is not Prefixed to Clergy-men; So other skilfull men are of Opinion, that it was ſometimes alſo prefixed in thoſe ages to Perſons of better Sort and Quality though no Knights, as well as to Knights, and Clergy-men: of which laſt opinion is Mr. *Wood* of *Oxford* the Antiquary and
[Page 73.] Mr. *Blunt* [73]of the Temple, as I was by letter informed from the ſaid Maſter *Blunt*, 1673.

2. To the Second: I did not call your three Anceſtors in my Anſwer Knights out of a certain ground unto my ſelf that they were ſo, but becauſe you had ſpoken to me thereof before, and I knew your deſires therein, and therefore out of my civility called them ſo: for I there tell you in my *Anſwer*, that I had rather give to all, eſpecially to your family, more then is due, than leſſe: Howbeit you urged me in your Reply to a Reaſon: which, ſee in my *Addenda* pag. 16, 17.

3. To the third I have ſo proved (as I conceive) the word *Domino*, given to ſome Perſons of greater Quality in ſome Notes of mine in Manuſcript on the ſeveral notions of the Word *Dominus*, who were neither Knights, nor clergy men: but theſe brief Notes I never yet Printed, Eſquire were none in thoſe Ages:

And, I think it will not be amiſſe, for me to tranſcribe thoſe notes of the ſeveral notions of the word *Dominus*, in this Place.

[Page 74.] [74]The Latin word *Dominus*, and the Greek word *κύριος*, and

our Engliſh word *Lord*, do properly and uſually expound one another: and, as the Greek word, *κύριος* hath its name *ἀπὸ τοῦ κυριεύειν*, ſo the Latin word *Dominus*, *à Dominando:* both of them properly ſignifying one that hath authority and power of Rule:

1. *Ὁ Κύριος*, and *Dominus*, and the *Lord*, being put abſolutely and alone, are, by way of excellency, always to be underſtood of God, or Chriſt: in whom is all Power and Dominion in Heaven and earth: and, in this notion, we have it frequently uſed in holy *Scripture.* So alſo, *Anno Domini* (put alone) is always underſtood of *Chriſt*, being a uſual computation from the Birth and Incarnation of our Saviour.

2. Sometimes the word *Dominus*, and *Lord*, are joyned with another word by way of Reſtriction: as *Dominus Imperator*, *Dominus Rex*, *Dominus Papa*, *Dominus Epiſcopus*, *&c.*

It ſeemeth to have been applyed to the Kings of *England* all along from [75]the time of the *Norman* Conqueſt: as *Dominus Johannes Rex*, and *Excellentiſſimus Dominus Henricus Rex:* See in my Book of *Antiquities* of *Cheſhire*, pag. 149, and 152: Many other examples might be cited herein. So in all our Endictments it is ſaid, *contrà Pacem Domini Regis:* and, thus applyed, it is always rendered in Engliſh—*Our Soveraign Lord the King:* becauſe of the Supreme power inherent in our Kings: *Soveraign* in French ſignifies, one that hath no Superiour: and this Appellation of *Soveraign Lord*, I find in the Statutes of 7 *Edw.* I, and 13 *Edw.* I. and ſo downwards, through the whole book of our Statutes. [Page 75.]

3. Sometimes the word *Dominus* is applyed to inferiour Perſons, & Subjects:

As Firſt, To Lords of greater Territories: ſo, in *anno* 1176, when *Henry* the 2*d.* gave *Ierland* to *John* his younger ſon: who (after that he became K. of *England*) aſſumed the Title of *Dominus Hiberniæ*, to his other Titles: ſee my Book of *Antiquities* pag. 77.

Sometimes to Lords of leſſer Ter-[76]ritories: So I find it [Page 76.]

applyed about the beginning of King *John's* raign, thus — *Ego Robertus Dominus Moaldiæ, & Seneſchallus Ceſtriæ, conceſſi Domui Sanctæ Werburgæ Virginis in Ceſtriâ, totam villam de Goos-Tree, &c.* The Original of this Deed is now in Poſſeſſion of *Manwaringe* of Barnſhaw in *Cheſhire:* And it was moſt frequently applyed to every Particular Lord of any ſmall Mannour or Village under King *Edward* the firſt, as is apparent out of my own Deeds and Charters: as, *Ego Willielmus, Dominus de Tabley;* about 20 *Edw.* 1. Q. *num.* 11. This was *Over-Tabley:* alſo, *Ego Willielmus de Tabley, Dominus de Knotsford, dedi ... &c:* about 22 *Edw.* 1. See my book of *Antiquities, pag.* 295, 296: infinite others there are, of this nature.

And in this notion it is always to be rendered in *Engliſh* by the word *Lord:* as, Lord of *Tabley*, Lord of *Knotsford*, and the like: and ſo it is often applyed at this day.

4. Now let us ſee the notion of *Dominus*, as it is expounded by our *Engliſh* word [*Sir*]:

[Page 77.] 77 Sometimes the word *Dominus*, and *Sir*, is, in its general notion, applicable in common diſcourſe to all Perſons of Quality, from the higheſt to the loweſt, as hath been ſaid already: and ſo are both theſe words uſed at this day.

More particularly, the word *Dominus* in old Deeds was applicable to Perſons of great Quality, and to the better ſort of Gentlemen, about the raign of King *John* and *Henry* the third: I find it thus applyed in *anno* 16. *Hen.* 3. See in my Book of *Antiquities pag.* 133, *Ranulphus, Comes Ceſtriæ & Lincolniæ... Salutem: ad univerſitatis veſtræ notitiam volo pervenire, me dediſſe Dominæ Hawiſiæ de Quency Sorori meæ chariſſimæ, Comitatum Lincolniæ, &c:* Where it is to be expounded, the Lady *Hawys de Quency:* So alſo *ibidem, pag.* 152. — *Hæc eſt conventio facta inter Dominum Ranulfum, Comitem ceſtriæ & Lincolniæ... &c:* about 6 *Hen.* 3. Where it is alſo to be expounded by our Engliſh word (*Sir*): and ſo we find it expounded in a French

[Page 78.] 78 Deed *de anno* 18 *Edw.* 1. 1290: — *A Touts ceaux Felippe, que fuit femme Monſieur Thomas de Dutton, Salute. Sachez moy*

aver graunte...a toute ma Vie à mon cher Seigneur Sire Henri de Laſci, counte de Nicole & coneſtable de Ceſtre, Toute le droit & le cleyme que ie avoy...en une Pechery que eſt appelle Chiploade en le Countèe de Ceſtre...ai ces Teſmoines, Monſire Robert de Hertford, Sire James de Nevile, Sire Wautier Bek, Sire Nicol de Leyceſter, Sire Peres Mallorè chivaliers, William de Nunny, John de Lundre, & autres. Done à Lundres, 24 iour de Maij, 18 *Edw.* I. *l' an du regne le Roy Edward* 18. Where he is called *Sir Henry Lacy*, Earl of *Lincoln: Lib.* C. *fol.* 156. x. taken out of one of the great *Couchir*-Books in the *Dutchy*-Office at *Grays*-Inne, *London Tom.* I. *Comitatus Ceſtriæ: num.* 13. *fol.* 43. *b.*

And it is not likely, that *Randle* Earl of *Cheſter*, and *Henry Lacy* Earl of *Lincoln*, had the Title of *Dominus* prefixed as Knights, becauſe they were Earls and ſupergraduated, the leſſer Titles being drowned in the [79]greater: howbeit I find that *Randle* Earl of *Cheſter* was Knighted *anno* 1188: but it ſeems to me, that it was the cuſtome of thoſe ages to call them Sir *Henry Lacy*, Earl of *Lincoln*, and the like: and ſo was many times given to the better Sort of Gentlemen under King *John*, and *Henry* the third, as you ſee it was to the Lady *Hawys*, though no Knights. [Page 79.]

So likewiſe *Lib.* c. *fol.* 67. b.—*Anno Gratiæ* 1256, *die Veneris proximâ anté Natale Domini, circà horam diei primam facta eſt hæc Conventio, inter Dominum Edmundum de Lacy ex unâ parte, & Dominum Willielmum Longeſpèe ex alterâ. Et, quià prælocutum fuerat in Vaſconiâ ſuper maritagio Henrici filij & hæredis dicti Edmundi, & Margaretæ filiæ & hæredis dicti Willielmi, dicto die ex conſenſu Partium completum eſt, &c:* And in the next deeds following *ibidem fol.* 67. c. *Vniverſiis... Edmundus de Laſcy conſtabularius Ceſtriæ, Salutem, &c.* dated *anno Gratiæ* 1257. Where the ſame *Edmund* hath not ſo much as the word *Dominus* added; and therefore [80]no Knight: Nor is it a ſure rule in the Deeds of thoſe ages to be underſtood of a Knight, unleſs the word *miles* do follow: becauſe it was then uſually applyed to Clergy-men alſo, and ſometimes to the better ſort of Gentlemen, though no [Page 80.]

Knights; as well as to Knights: before the age of King *John*, *Knights* were not ſo common and frequent as ſince: For, *anno Domini* 1256, 40 *Hen.* 3, who ſo had fifteen pound *per annum* in lands, were called to be made Knights, or to be fined. *Mat. Paris.*

And from about this time downwards, the word *miles* ſeems to be added to the name of *Knights*, conſtantly.

5. So that the word *Dominus* was certainly applyed to Knights, and alſo the word *miles* often added, under *Henry* the Third: and our *Engliſh* word *(Sir)* was very anciently affixed to the Chriſtian Names of Knights: And in the Raign of *Edward* the firſt, was ſo much taken to be parcel of their names, ſaith *Selden* in his *Titles of Honour pa.* 939. as that the Jews
[Page 81.] 81 then in *England* did in their Hebrew Inſtruments (called *Stars* obviouſly in the Records) write it *Sir*, without interpreting it by any word of their own: And we have a Precedent in Hebrew there ſet down by *Selden.*

That the word *Dominus* was frequently applyed unto Knights under *Edward* the firſt, having the word *miles* alſo added is manifeſt out of my own Evidences: I. *num.* 5.—*Ego* M. W. *dedi Domino Nicolao de Leyceſter militi, terras in Wath* [*in Yorkſhire*] 22 *Edw.* 1. Alſo I. *num.* 28. *Sub anno* 20. *Edw.* 1. Infinite other Examples occur elſewhere alſo; and then was *Domino* expounded by our Engliſh word *Sir*, 18 *Edw.* 1. as appears by the french Deed a little before tranſcribed: and ſo have they been applied ever ſince to this day: and in this Notion have expounded one another.

6. So alſo the word *(Sir)* hath been applied in *England* to Clergy-men very anciently: I find it clearly ſo from King *John's* time downwards to the raign of Queen *Elizabeth*, or King
[Page 82.] 82 *James:* which was alſo expreſſed in Latine by the word *Domino. Lib.* c. *fol.* 21. D. among the witneſſes thus—*Teſtibus, Domino Willielmo de Maſcy, Parſonâ de Bowden, Mattheo de Hale,... &c:* This was in the time of *Henry* the third, about *anno Domini* 1250: many Examples of like nature occur in

thoſe times: and ſometimes uſed without the word *Perſoná* or *Rectore*, but moſt uſually with it: as, *Domino* A. B. *tunc Rectore Eccleſiæ de Mobberley:*

And the People commonly called their Pariſh-Prieſts by the apellation of Sir *William Maſſy*, Sir *Richard Comberbach*, and the like, in ordinary communication, as at this day we call Knights for the moſt part: and the Title *(Sir)* was ſo applyed to Clergy-men, till the times of Queen *Elizabeth*, and King *James*, in our Country. For, after the reformation of Religion, it began by little and little to be omitted: It was given to Prieſts at the firſt, as it were in honour: becauſe of the great eſteem which the People had of them.

[Page 83.] 83 7. The word *Dominus*, and *Sir*, are at this day applyed to Batchlours of Art in our Univerſities: but this is only to their Sir-names: as, Sir *Blackburn*, Sir *Sanderſon*, and the like.

The word *Cyr (vulgò Syr) Spelman* in his Gloſſary, *pag.* 183, deriveth from the Greek κῦρ, as an abbreviation of the word κύριος: as *Don* and *Dom* from the latin word *Dominus*, frequent amongſt the Italians and Spaniards: and the letter *C.* (having the vowels of *e*, or *i* and *y* following) is pronounced by Engliſh men as the letter *S:* which appears in the words *Certain*, *City*, *Circuit*, *Civil*, and the like.

Others derive the word *Sir*, from the Hebrew word *Sar*, which Signifies a Ruler, a Lord, or Prince: an honourable appellation.

Some ſay, We have the word *Sir* from the French word *(Sire)* which anſwers to the Latin word *Pater*, or *genitor:* and ſo Engliſh-men at this day uſually call a Grand-father *(Grand-ſire)* and ſo much of the word *Dominus.*

[Page 84.] 4. To the fourth Queſtion. It 84 doth as well prove it in your Anceſtors, as it doth in the two *Duttons:* But it is not yet certain to me of either; for ſometimes they have *Domino* prefixed, and ſometimes not.

5. To the fifth Queſtion: I do not ſay, that the word *Dominus* doth only Signify *Maiſter*, But, it ſeems to me, it may be ſometimes ſo expounded where the Party is not certainly a *Knight:*

and perhaps alſo it may be expounded ſometimes *Sir* (taken in the latitude of that word) and applyed to great Perſons, though no Knights: as Sir *Henry Lacy* Earl of *Lincoln*, and the like: And the word, *Domino*, may be given to ſome Perſons of better note in reſpect of their Quality, or in reſpect of their Office, and yet not to others, in the ſame Deed: which others, may be good Gentlemen alſo; but at that time perhaps not of ſo publique note as thoſe to whom it is ſo prefixed in the ſame Deed.

6. To the Sixth: I do not call all thoſe four Knights, nor yet two of them: for, *pag.* 226 of my *Antiquities*, I there call one, [Page 85.] Sir *Geffrey* of [85]*Budworth*, ſon of *Adam de Dutton;* but I do not call him Knight: and ſo *pag.* 223, I call another of them, Sir *Geffrey de Chedill*, but I do not call him Knight: for, as I ſaid immediately before, *Dominus* perhaps may be ſometimes ſo expounded, and ſometimes alſo, *Maiſter:* and perhaps here it may be rendered either way: and yet I muſt confeſſe, when I writ that book, I did not heed theſe ſmall niceties ſo acurately: and whether he were a Knight, or no, it is not much material.

What now followeth in your *Anſwer* to *Page* 49, is indeed little material, or what hath elſe been anſwered by me formerly, in my other books over and over again.

Page 49, *of your* Anſwer *to my* Addenda.

Here now you come to *Bertred* again, *and* ſay, that you have heretofore proved her to be but 24 years of Age *anno* 1181: and [Page 86.] now you find in the third part of Mr. *Dugdales Mo-*[86]*naſticon Anglicanum*, *pag.* 226. that *Hugh Cyveliok* and his mother *Maude* did give *Stivinghale*, vulgo *Stiſhall in com.* Stafford: to *Walter Durdent*, Biſhop of *Cheſter*, and his Succeſſours: to which Deed *Euſtace* the conſtable was witneſs.

Now the ſaid Earl *Hugh* being not in a capacity to Seal a Deed until he was one and twenty years of Age, and *Euſtace* being ſlain in a battel againſt the Welſh, *anno* 1157, the ſaid

Hugh muſt needs be at the least one and twenty years older then his wife *Bertred:* But it is likely, the Deed was made ſome years before, to wit, immediately upon the death of *Randle de Gernonijs*, his Father: For the ſaid *Randle* dyed excommunicate, and *Stivinghale* and thoſe other lands were given for his abſolution and the health of his Soul:

My Reply.

Here, you ground your Argument again upon a mere errour, miſtaking altogether the Law and Cuſtoms of [87]thoſe elder ages: [Page 87.] For, you may ſee the very like precedent in my book of *Antiquities, pages* 114, 115: where you find *Richard*, Earl of *Cheſter* joyning with *Ermentrude* his Mother, in the Grant of *Wudmundeſlei*, to the Abbey and Church of *Abbington* in *Barkſhire, anno* 6. *Hen.* 1, *anno Domini* 1106, whiles he was yet ſcarce twelve years old.

Whereof the Book of *Abbington* immediately before the Deed there tranſcribed, ſaith thus, *fol.* 47, ...

Ipſe comes benefactum extulit, & ſuo deſcripto roboravit: quod deſcriptum, Sigillo quidem matris Signari conſtitit: nondum enim militari Baltheo cinctus, materno Sigillo literæ quælibet ab eo directæ includebantur: hâc de re, quod eò annotatur, Comitiſſæ potiùs quàm Comitis Sigillo Signatur.

Selden, from theſe words obſerveth, that the Law being ſuch, that whoſoever was Knighted, though before the Age of one and twenty, he was eſteemed as of full Age in regard of any Wardſhip or other Tuition: and the [88]uſe being, that ſuch great [Page 88.] Lords were often Knighted before they were of full Age, and this Earl *Richard* not having as yet received the honour of Knighthood, but being a Child and under the tuition of his Mother, for that reaſon he uſed her Seal to this his Charter, and to other his Letters alſo: *Selden* in his *Titles of Honour*, pa. 786.

Thus you groſly miſtake all Antiquity, by your fragments of Law perpetually through all your books: For, Earl *Hugh* joyning here with *Maude* his mother in this Grant of *Stivinghale*, ſhows clearly that he was then but a Child, and under Tuition of his Mother: For, when ſuch Lords were either at full Age, or ſo old as to have received the Honour of Knighthood though before they were of full age, I believe you will ſcarcely find in thoſe ages, that either they uſed their Mother's ſeal, or that the Mother joyned with them in their Grants.

[Page 89.] And therefore, ſuppoſing Earl *Hugh* to be about twelve years old when he joyned with *Maud* his Mother in the [89]Grant of *Stivinghale*, at which age Earl *Richard* joyned with his Mother *Ermentrude* in the Grant of *Wudmundeſlei;* and that the grant of Earl *Hugh* was made *anno* 1157, then was Earl *Hugh* born *anno* 1145: but I will ſuppoſe the Grant made *anno* 1155 (& it could not be made much ſooner, for it muſt needs be after the death of his Father *Randle*) then was Earl *Hugh* born *Anno* 1143: and ſo he would be about Ten years old at the death of his Father: ſo that you have brought the ſtrongeſt Argument againſt your ſelf, that poſſibly could be in ſo dark a path againſt your moſt erroneous computation of *Hugh Cyveliok's* age: which you ſo much ſtood upon in your former books upon poor weak grounds, as I have formerly told you.

Page 50, 51, *Of your* Anſwer *to my* Addenda.

[Page 90.] Here you come to another weak reaſon to prove the birth and age of *Hugh Cyveliok:* and ſay, that in the *errata* at the very end of *Powel's* notes, [90]ſhowing how the Errors in Printing ſhould be corrected: *Pag.* 197, *line* 16; the Welſh Hiſtory is miſ-printed in the ſaid Page, and ſhould have been Printed thus .... About the ſame time *Hugh* ſon to the Earl of *Cheſter*, fortifyed his Caſtle of *Cymaron*, & wonne *Melienyth* to himſelf.

Now, the time when this was done, we find there to be *anno* 1142: and you ſay, I will not deny but the Welſh Hiſtory is of good Credit, becauſe I follow the ſame in my book of *Antiquities:* And *Powell* in his notes thereon tells us, that *Caradocus Lhancaruan* is reputed by all learned men to be the Author thereof to the year 1156: and that by the Authority of *Voſſius*, and *Iſaacſon*, the ſaid *Caradoc* was living when *Melienyth* was wonne.

So then, you compute, that ſuppoſing him, the ſaid *Hugh*, to be about twelve years old at the winning of *Melienyth*, *anno* 1142: and that he ſhould marry *Bertred* whiles ſhe was but 14 years old; then the marriage (ſay you) would fall in *anno* 1171: [91]yet would *Hugh* be 41 years old when he married *Bertred:* and ſo by conſequence it is not likely that *Bertred* was his firſt wife, and then it is to be preſumed that he had a former wife, and that-former wife muſt be mother of *Amicia*, and ſo *Amicia* muſt be a legitimate daughter: All which are but bare Suppoſitions: [Page 91.]

My Reply.

Here is a fine Computation, and upon a ſure Ground no doubt: But let us examine the matter a little. I will firſt put down the words of the *Welſh*-Hiſtory, as it is put out with *Powel*'s-notes, *Anno* 1584, *pag.* 197.—

About the ſame time [*ſcilicet*, *Anno* 1142] *Hugh*, Earl of *Cheſter* fortifyed his caſtle of *Cymaron*, and wan *Melienyth* to himſelf: and at that time, King *Stephen* took *Geffrey Mandevyle* Priſoner at Saint-*Albons*.

See here two groſſe Miſtakes in the Welſh-Hiſtory aforeſaid: firſt, *Hugh* Earl of *Cheſter* ſaid to take *Melienyth*, *Anno* 1142: when it is moſt [92]certain, there was no ſuch Earl of *Cheſter* at that time: for *Randle de Gernoniis* (Earl of *Cheſter* and father of *Hugh*) dyed not till *anno* 1153, as is clearly proved in my book [Page 92.]

of *Antiquities pag.* 129: ſo that *Hugh*, Earl of *Cheſter*, is moſt certainly miſtaken here, for *Randle* Earl of *Cheſter:* and *Geffrey Mandevyle* is here alſo miſtaken for *William Mandevyle;* ſee *Matthew Paris, ſub anno* 1142, *pag.* 79.

But let us now ſee, how you would ſtretch this to ſerve your turn, and to be meant of *Hugh Cyveliok:* marry now, you turn us to the *Errata* at the end of *Powel*'s notes on the Welſh-Hiſtory aforeſaid: where, among other *Errata*'s to be amended, it is ſaid——*Pag.* 197. *line* 16. *Hugh*, Son to the Earl of *Cheſter.* An amendment certainly worſe than the Errour it ſelf: For *Randle de Gernoniis*, a man of great Valour, of an Active and turbulent Spirit, famous for exploits of warre, who about the ſame time, to wit, in *anno* 1141, took King *Stephen* Priſoner at
[Page 93.] the Battell of [93]*Lincoln*, was more likely in that year 1142 to be the Perſon employed in this Exploit here mentioned, than a child, who (I am very confident) was not yet born.

So that if you have no better proof than this for your Suppoſition, you can never hope for any Judicious man to believe what you here do ſay: nor can you certainly prove by any Hiſtorian of Credit, or by any Record, that *Hugh Cyveliok* was at this time born: nor can you make it to appear, that *Randle de Gernoniis* was married till about the year 1139, or 1140: Wherefore, it is certain, that *Hugh Cyveliok* had never any other wife but *Bertred;* and *Amicia* muſt by ſure conſequence be a Baſtard, being no daughter by *Bertred:* nay, the very Deed by you produced (& by me before-mentioned) of *Hugh's* Grant of *Stivinghale*, joyning therein with *Maud* his mother, being then a child and under Tuition of his Mother, clearly ſhows that he could neither be ſo old as you would now ſuppoſe him, nor yet that he was born *anno* 1142.

[Page 94.] [94]What you urge of my following of the Welſh-Hiſtory, and the credit I have thereof; I knew no better to follow, for the Welſh Kings: which yet I have fortified in ſome things with better proof: And as I believe it true in many things, ſo it hath

alſo ſome groſſe miſtakes and errours; nor is it at all proved by good Authority, or exactly compoſed throughout; nor ſhall you therein from the beginning find all the Wifes, Children, and Baſtards, of the ancient Princes or Kings of *Wales* clearly recorded: and ſo are Dr. *Powell's* Notes thereon full of errours; and eſpecially in his abſurd Pedegree of the Earls of *Cheſter*, and in ſeveral other things.

Thus have I run through your *Anſwer* to my *Addenda:* and now I appeal to the ingenious Reader, whether in great deliberation I may not juſtly conclude the ſame from the beginning to the very ending, either ſtuffed with groſſe miſtakes, or impertinent Fragments of Law of later ages, (which are either miſtaken [95] for the Law in the more ancient ages, or brought in upon falſe grounds, and nothing at all to the point, for which they are produced) or wild and weak Anſwers, or great diſingenuity in denying and palliating of plain Truths, or miſreporting of Authorities and miſtaking of them, to ſay nothing of your unjuſt Calumnies: All which will more clearly appear to the ingenious Reader in the diligent Peruſal of this Reply. [Page 95.]

And I further appeal, Whether you have at all brought any one ſubſtantial Argument in all your books, that proves *Hugh Cyveliok* to have had a former wife; and which I have not fully and clearly anſwered in this or ſome other of my books: which not being proved, *Amicia* muſt certainly be a Baſtard: And if you will keep to this one Point, and meddle with nothing elſe, which is the main Queſtion between us, to wit, Whether *Hugh Cyveliok*, Earl of *Cheſter*, had a former wife before *Bertrede?* I will joyn iſſue with you in this very Point; though in ſtrictneſs you ought [96] alſo to prove *Amicia* to be daughter of that former wife, if there were any ſuch: I ſay, If you will publiſh any Arguments, briefly and Syllogiſtically, without running into any other Point to confound the matter, and prove your Propoſitions Scholaſtically by Reaſon or Authority fairly and briefly for the better apprehenſion of all Readers; I will undertake to give a full and [Page 96.]

clear *Anſwer* to every Particular, and prove all my Aſſertions by good Reaſon and Authority, to the ſatisfaction of all Learned Readers; And when we have ſo done, let us leave it to the whole world to Judge: otherwiſe there will never be an end.

Mobberley,
April. 14.
1674.

Your loving Coſin
and Servant,

P. L.

Sir *Thomas Manwaring*'s

LAW-CASES MISTAKEN:

OR THE

Ancient Law Miſ-Underſtood.

AND THE

New Law Miſ-Applyed.

Wherein is ſhewed, That all thoſe Parcels of Law, produced by Sir *Thomas Manwaring* Baronet, in all his Books, to avoid a BASTARDY, are all clearly Miſtaken by him: And were either no LAW in the Age of *GLANVIL*, or are altogether impertinent to the Point for which they are urged by him.

By Sir *Peter Leyceſter* Baronet.

LONDON,

Printed in the Year, M,DC,LXX,IV.

Epiſtola Dedicatoria.

Graviſſimis Doctiſſimiſque Viris,
Univerſis Angliæ Juſticiariis,
Salutem.

Domini Venerabiles.

CUm nuper admodum de Baſtardiâ Antiquâ *orta ſit nugatoria valdè ac nullius momenti controverſia, inter duos Sanguinis Propinquitate conjunctos, ſed hâc in re diverſi inter ſe judicij; Quorum unus (primus hujus controverſiæ inſtigator, qui rectiùs forſan ſibi conſuluiſſet ſi tacuiſſet) appellavit legem, alteram ac Priorem inveſtigandi cauſâ uxorem* Hugonis Cyvelioc, *olim Comitis Ceſtriæ; adeò ut hoc idem ex incerta admo-|dum legis normâ probare totis viribus nitatur: quod tamen nec ex Hiſtoriis, nec Archivis, diligentiſſimâ licèt indagine, uſpiam conſtare poſſit. Hunc ego ſanè eâdem ſequi viâ non gravabor: Sicut enim* Feſtus *Divo* Paulo *dixit,* καίσαρα ἐπικέκλησαι; ἐπὶ καίσαρα πορεύσῃ: *itidem ego; Appellavit legem? ad legem ibit: Quapropter hunc meum libellum in lucem dare, opportunum duxi, ut meliùs ſciri poſſit Legis* Veteris *ac* Novæ *ſtatus: Quem ſanioribus veſtris judicijs hîc exhibere mihi libuit:*

Neſcio reverà, Doctiſſimi Gentis noſtræ Senatores, Cui potius eundem darem & dedicarem, quàm vobiſ-ipſis, Qui legis noſtræ eſtis Interpretes: Vos omnes itaquè obteſtor,

An-non, ſæculo Glanvilli, *ex antiquâ lege noſtrâ, dare terram in liberum maritagium cum Baſtardâ filiâ ſuâ cuivis homini liceat;*

etiamſi, mutatâ lege, Donum in liberum maritagium cum Baſtardâ lex hodiè non permittat?

Sagacioribus voſtris innitor judicijs: parum me legibus verſatum profiteor: tantum ſcire legis mihi ſufficit, quantum Privato homini Generoſo neceſſe|eſt: Studia alia aliorſum me ducunt: Theologiam cæteris omnibus præfero, cujus ſtudium humano generi apprimè neceſſarium duco: Hiſtoria etiam me maximè delectat: Sed quò proficiſcor? Siſto gradum: & ad rem redeo:

Si in his erraverim, παλινῳδίαν ᾄδειν *paratus ſum: Sin autem non erraverim, ad veritatem contra aliorum Calumnias vindicandam, vos ſtrenuos mihi fore Patronos, ſpes eſt. Valete.*

Mobberleiæ
Calendas Maij,
1674.

[1]Sir *Thomas Manwaring*'s [Page 1.]

Law-Cases Miſtaken, &c.

I Shall in the firſt place rally together all thoſe Peices of Law of later Ages produced by Sir *T. Manwaringe* and Miſapplyed by him, in his three books lately Publiſhed to avoid the Baſtardy of *Amicia*, under *Henry* the Second: which I have briefly collected together in the following Pages: and next to them I have likewiſe put down in brief thoſe, Parcels of the Law in *Glanvil's* time, and thoſe more ancient Ages, contrary to thoſe produced by Sir *Thomas:* This done, I ſhall prove thoſe Parcells of the Law of the more ancient Ages by good Authority, either out of *Glan-*[2]*vil's* own book *de Legibus Angliæ* [Page 2.] (who was Chief-Juſtice of *England* under *Henry* the Second, and lived in the very Age with *Amicia*, and was the firſt ſince the *Norman*-Conqueſt who hath committed unto writing any thing touching our common Law of *England*) or elſe by clear Precedents of thoſe times, or other good Authority; Shewing likewiſe the errours of what is ſaid by Sir *Thomas* to the Contrary: And laſtly, I ſhall cull out the other impertinent Parcels of Law in all his books, ſhewing how they are brought in upon falſe grounds, and altogether impertinent to the Point for which they are Produced.

[Page 3.] [3]*Parcels of the Law of later Ages, Produced by Sir* Thomas Manwaring, *and Miſapplyed by him.*

1. *That,* Lands cannot paſſe *in libero maritagio* with a Baſtard-daughter. *Cook* 'pon *Littleton. fol.* 21. *b.*

2. *That,* The woman in a Gift of *Frank*-marriage muſt be of the blood of the Donour, who is the cauſe of the Gift: *Cook* upon *Littleton, fol.* 21. *b.* See the defence of *Amicia, pag.* 40: and alſo Sir *Thomas* his Reply to my Anſwer *pag.* 44, a Baſtard is not *de Sanguine Patris.* Dyer, *fol.* 374. *b.*

3. *That,* the words [*in liberum maritagium*] are words of Art, and cannot be expreſſed by words equipollent; and ſo are neceſſarily required in a Gift of *Frank*-marriage: and, becauſe thoſe words do create an eſtate of inheritance againſt the general Rule of Law, therefore they muſt be punctually purſued: *Liberum*

[Page 4.] without *ma-*[4]*ritagium,* or *Maritagium* without *Liberum,* not good, *Cook* upon *Littleton* fol. 21. b. alſo the Reply of Sir. *Thomas* to my Anſwer, pa. 55, 56, 57.

4. *That,* If a man give Land with his Daughter *in Connubio Soluto ab omni Servitio, &c.* yet, in this Caſe, here paſſeth but an Eſtate for Life. *Cook,* ibid fol. 21. b.

5. *That,* Lands given *in libero Conjugio* are but words like *in Connubio ſoluto ab omni Servitio,* and ſo make but an eſtate for Life: Sir. *Thomas Manwaring*'s own words in his *Defence of Amicia* pa. 48. the Lord *Cook* ſaith no ſuch thing.

6. That, *Glanvil* doth not ſay, that Lands might be given with any woman *in liberum maritagium;* but only, *in maritagium:* Sir *Thomas* his own words in his Anſwer to my *Addenda, pag.* 31. And in his Reply to my Anſwer *pag.* 39, 40.

7. That *Hugh Cyveliok,* Earl of *Cheſter,* could not be in a Capacity to Seal a Deed till he was one and Twenty years of Age: Sir *Thomas* in his Anſwer to my *Addenda pag.* 49.

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[5] *Parcells of the Law in* Glanvil's *time, and thoſe more ancient Ages, contrary to thoſe Produced by Sir* Thomas. [Page 5.]

1. THat, Lands did and might paſſe, in thoſe ages, *in libero maritagio* with Baſtard-daughters.

2. *That*, Gifts in *Frank*-marriage of thoſe more ancient Ages, were not tyed up only to thoſe of the Blood: And that Baſtards in thoſe times were reputed of the blood.

3. *That*, Though the words [*in liberum maritagium*] by the Law in later ages were required as a Term of Art, & legally to be purſued in all Grants of *Frank*-marriage; yet in the more ancient ages they were not by Law ſo ſtrictly required.

4. *That*, in thoſe more ancient Ages, Lands given with a daughter *in maritagio, Soluto ab omni Servitio*, &c. was good, and would paſſe an eſtate of Inheritance: And therefore, *in connubio, ſoluto ab omni Ser-*[6]*vitio*, &c. would have been then good alſo. [Page 6.]

5. *That*, The words [*in libero Conjugio*] in thoſe more ancient ages was as good as [*in libero maritagio*]: and, Lands did in thoſe ages paſſe by vertue of thoſe words accordingly.

6. That *Glanvil* doth ſay, that, Lands might be given with any woman *in liberum maritagium lib. 7. ca.* 18. and that *in maritagium* in thoſe ages was all one, and often underſtood for the ſame thing with, *liberum maritagium*, where the Deed in marriage did acquit the Land from all Service towards the chief Lord, *à ſe & hæredibus ſuis.*

7. *That*, Earls and great Lords in thoſe former ages did often joyn with their mothers (who then had the Tuition of them) in Deeds and Charters, whiles they were very young, and long before they attained the age of one and twenty years, but uſed then their Mother's Seal to ſuch Deeds under whoſe Tuition they were, and not their own.

[Page 7.] 7 AND now I will prove out of *Glanvil* (who was chief Juſtice of *England* under *Henry* the Second) as alſo by clear Precedents of thoſe Ages, all thoſe Parcells of Law of the more ancient Ages before-mentioned, and ſhew the Errours and Miſtakes of what is ſaid by Sir *Thomas Manwaring* to the Contrary. So that his Ground-work failing, all the whole Fabrick erected by him in defence of *Amicia* muſt needs fall.

1. For the Firſt: That Lands did and might paſſe in thoſe more ancient Ages *in libero maritagio* with Baſtard-daughters;

Take here the words of *Glanvil* (who dyed *Anno Domini* 1190) lib. 7. ca. 1. *In aliâ acceptione accipitur Dos ſecundum leges Romanas: Secundum quas proprié appellatur Dos, id quod cum muliere datur viro: quod vulgariter dicitur Maritagium: Poteſt itaquè quilibet liber homo, terram habens, quandam partem*
[Page 8.] *terræ ſuæ cum filiâ ſuâ, vel cum aliquâ aliâ quâlibet* 8*muliere, dare in maritagium, ſive habuerit hæredem ſivè non, velit hæres vel non, imò & eo contradicente.*

Alſo, *lib. 7. ca.* 18. *Maritagium, autem aliud nominatur liberum, aliud Servitio obnoxium: liberum dicitur maritagium, quando aliquis liber homo aliquam partem terræ ſuæ dat cum aliquâ muliere alicui in maritagium, itâ quod ab omni Servitio terra illa ſit quieta, & a ſe & hæredibus ſuis, verſus capitalem Dominum acquietanda: & in hâc quidem libertate ita ſtabit terra illa uſque ad tertium hæredem: nec interim tenebuntur hæredes inde facere aliquod homagium: Poſt tertium verò hæredem, ad debitum Servitium terra ipſa revertetur; & homagium indè capietur. Quia, ſi fuerit pars feodi militaris, pro quantitate terræ Servitium feodi inde preſtabit.*

Solet autem quandòque terra aliqua dari in maritagio, Salvo & retento debito Servitio ipſi Capitali Domino: & tunc quidem tene-
[Page 9.] *buntur maritus muli-*9*eris ipſius, & hæredes ſui, Servitium id facere, ſed ſine homagio uſque ad tertium hæredem:*

With whom alſo agreeth *Bracton, lib.* 2. *ca.* 7. (who lived in the raign of King *Henry* the *third.*) *Et eſt maritagium aliquando liberum, Scilicet ab omni Servitio quietum; & aliquando Servitio obligatum: liberum autem maritagium dicitur, ubi Donator vult quod terra, Sic data, quieta ſit & libera ab omni Sæculari Servitio, quod ad Dominum feodi poſſit pertinere, & ita quòd ille, cui ſic data fuerit, nullum omninò faciat indè Servitium uſquè ad tertium hæredem.*

So then, the Law was clear in *Glanvil's* time, that any man might give part of his Land to any other in marriage with his daughter, or with any other woman whomſoever: And if with any other woman whomſoever, then certainly with a Baſtard-daughter: for the words are general, without any reſtraint at all: and there he tells us alſo, that Lands given in marriage, ſo as they be acquitted from all Service towards the chief Lord, ſuch are [10]grants in Free-marriage: and when the ſervice due to the chief Lord was excepted, then the Heirs were bound to doe the Service, but without homage, to the third heir: wherefore in thoſe more ancient ages Lands did paſſe according to Law, with Baſtards in Free-marriage: [Page 10.]

Again, *Bracton lib.* 2. *ca.* 7. ſaith, *Quoniam terra data Baſtardo in maritagium, ſicut & aliis, vel Baſtardo per ſe, in ſe tacitam habet conditionem vel expreſſam de reverſione* .... &c.

So that, if lands might then be given to a Baſtard-Son in marriage with any Woman (as Sir *Thomas Manwaringe* confeſſeth in his defence of *Amicia, pag.* 35.) why not then to any man with a Baſtard-Daughter in marriage?

Sir *Thomas* hereunto anſwereth in the place alledged, that though *Bracton* ſaith, that lands may be given *Baſtardo in maritagium cum aliquâ muliere;* yet, he hath not a word at all, that lands may be given to a man *cum Baſtardâ:* whereas in this caſe of *Frank*-marriage, the Party *with whom* [11]the Land is given, not the Party *to whom* the Land is given, is the Principal thing that is conſiderable herein. [Page 11.]

Which Anſwer is very ſuperficial and inſufficient: For neither

the Party to whom, nor the Party with whom, is herein Principally conſiderable; but the Party who is the Principal cauſe of the Donation: For whether Baſtards in that Age were capable of Gifts in *Frank*-marriage, is now the Queſtion: whether to a Baſtard, or with a Baſtard, it matters not; that is the ſame thing: he muſt give a better reaſon to thoſe words of *Bracton*, or it cannot be Satisfactory; for if the Law did not then allow Baſtards to be capable of Gifts in *Frank*-marriage, how is it that *Bracton* ſaith a Baſtard-Son may have lands given unto him in *Frank*-marriage? and if a Baſtard-ſon be capable of ſuch a gift, why not a Baſtard-daughter? And though *Bracton* mentioneth the one, yet he excludes not the other: and *ubi lex non diſtinguit,*
[Page 12.] *neque nos diſtinguimus:* how the Law could al-[12]low the one to be good, and not the other, I cannot yet apprehend.

For the Anſwers of Sir *Thomas*, how he would have the words in *Glanvil* [*cum aliquâ aliâ quâlibet muliere*] to be reſtrained only to thoſe of the Donor's blood, I ſhall ſpeak of them, when I come to the Second Point of the Ancient Law.

And in the mean time, I will ſhew ſome Precedents, clearly proving that lands did uſually paſſe in thoſe more ancient ages in Free-marriage with Baſtard-daughters: and thereby infallibly demonſtrating both the Law and Practice of thoſe times.

1. In the firſt place; See one in my book of *Antiquities*, *pag.* 112, 113: where *Drayton* was given to *Geva*, (baſe daughter of *Hugh Lupus*, but in the Deed ſtyled only daughter of Earl *Hugh*) by *Randle de Gernoniis* Earl of *Cheſter* in Free-marriage, as Earl *Hugh* gave and granted the ſame to her in Free-marriage: This Deed of *Randle* was made towards the end of King *Henry* the *firſt:*

[Page 13.] Concerning which, Sir *Thomas* [13]*Manwaringe* ſaith, in his Anſwer to my Addenda *pag.* 2. he cannot but ſmile that I ſay, the gift to *Geva* was ſuch a Precedent, conſidering how in his Defence of *Amicia*, *pag.* 43, 44, and ſo onwards; and alſo in his *Reply* to my *Anſwer*, *pag.* 23, and *pag.* 45, 46, and ſo onwards to the 60 page; he hath made it to appear, that it is very uncertain

that the ſaid *Geva* was a Baſtard, but moſt certain that the Gift to *Geva* was not a Gift in *Frank*-marriage.

I wonder at his confidence: for I have proved her a Baſtard by ſure conſequence out of *Ordericus*, a man that lived in that very Age with *Geva:* & nothing at all proved by Sir *Thomas* to the contrary, material to that point: for which I muſt refer the Reader to my Anſwer unto his *Defence of Amicia, pag.* 33 to *pag.* 41.

But let us ſee, how Sir *Thomas* would prove the Gift to *Geva* in Free-marriage, to be no gift in Free-marriage: I ſuppoſe, he means, that it is not a good Deed in Law: for otherwiſe he would be like the Gentleman [14]who would diſpute about a Croſſe, but the Queſtion muſt be — whether that Croſſe was a Croſſe, or no Croſſe: For the very words of the grant are, *in libero Conjugio*, that is, in Free-marriage. [Page 14.]

The reaſons he gives in his *Reply* to my *Anſwer, pag.* 57, and in his *defence* of *Amicia, pag.* 49, are theſe: 1. That the words *in libero Conjugio* make but an Eſtate for life, becauſe the Lord *Cook* ſaith, that the words *in liberum maritagium* are ſuch words of Art, as cannot be expreſſed by words equipollent.

2. The Deed to *Geva* did intend no more than an Eſtate for life, it running all along in the Singular number, [*& teneat benè & in pace* ... &c.] and there being no mention of her heirs.

3. The Deed to *Geva* is made to her alone, and not to a Husband with her: whereas the Lord *Cook* ſaith, that one thing incident to Frank-marriage is that it be given for conſideration of marriage, either to a man with a woman, or (as ſome have held) to a Woman with a man.

[15]4. That the Donees [by the ancient Law] were to hold freely of the Donor to the fourth degree: and that here, there are no Donees, but one Donee. [Page 15.]

To the Firſt: he is horribly out, to ſay that the words *in libero Conjugio* in the grant to *Geva* made but an eſtate for life: when we ſee *de facto* that the Town of *Drayton* did paſſe to the heirs of *Geva* by that Deed, and in thoſe very words: whoſe heirs

[the *Baſſets*] enjoyed the ſame: and it is apparent, that from the *Baſſets* ſometime Lords thereof, it gained the name of *Drayton-Baſſet* for diſtinction, as even at this day it is called. And it is abſurd for any man to ſay, that the Gift to *Geva* was not a Gift in Free-marriage: for thus it runnes, if we render it in Engliſh,— *Randle* Earl of *Cheſter*, to *William* the Conſtable, and *Robert* the Steward, ... *&c.* Greeting: Know yee, that I have given and granted unto *Geva Riddle*, daughter of Earl *Hugh*, *Drayton* with the appurtenances in Free marriage, even as Earl *Hugh* gave
[Page 16.] and granted the [16]ſame to her in Free-marriage: ... *&c.* See the Deeds at large in my *Antiquities* of *Cheſhire*, *pag.* 112, 113. And to ſay, this is not a Gift in Free-marriage, is to ſay, that a Gift in Free-marriage is not a Gift in Free-marriage; which is very abſurd: and to ſay, it is not a good Deed in Law, becauſe the words are not *in libero maritagio*, whereunto (the Lord *Cook* ſaith) no other words can be equipollent; I Anſwer, the Lord *Cook* ſpeaks as the Law ſtood in his time and in late ages: which is falſe, if we underſtand it of the more ancient Ages, as is very evident by this grant to *Geva:* See more hereof in the Third Point of the ancient Law.

To the Second: The words (*Frank*-marriage) create an eſtate of inheritance in themſelves by Law; although it be not expreſly ſaid in the Gift to the Donees and their heirs, *Littleton*, *Sect.* 17: and therefore the words *in libero Conjugio* did convey the inheritance here unto *Geva* by Law: and ſo needed not to expreſſe
[Page 17.] the word [*heirs*] in the Grant: wherefore you [17]do not ſay right, that the Deed to *Geva* did intend no more then an Eſtate for life.

To the Third. It hinders nothing, though the Gift be made to *Geva* alone, and in the Singular number. But ſay you, how can there be a Gift in Free-marriage, if there be no marriage at all? and how can there be a marriage, if the man or Woman be alone? It is true, that there can be no marriage if the man or Woman never were married, nor ever ſhould marry: yet there may be a Gift in Free-marriage to one Perſon alone, as you ſee here was ſuch a Gift to *Geva*, who had been or was now again married:

and this Gift was good, and did convey the lands to her heirs: And *Bracton* ſaith, *lib.* 2. *ca.* 7. *Part* 3, *Et Sciendum, quòd terra datur aliquandò ante ſponſalia & propter nuptias, à patre mulieris vel alio parente, ipſi marito cum muliere aliquâ vel utrique ſimul, ſcilicèt tali viro & uxori ſuæ (quod idem eſt) & eorum hæredibus, vel alicui mulieri ad ſe maritandam,* &c. And preſently after: *fit enim ta-*[18] *lis Donatio antè matrimonium contractum, aliquandò in ipſo contractu, aliquandò poſt contractum.* How will you conſter here *alicui mulieri ad ſe maritandam,* if lands in this nature may not be granted to one Perſon alone? The law was not ſo curiouſly woven in theſe ancient ages, as in the Lord *Cook's* time: and I have a copy of a Deed made about the raign of King *John,* wherein *Saher de Quency* Earl of *Wincheſter* gave to *Robert de Quency* his ſon and heir, *ad dandum in liberum Dotarium Hawiſiæ ſorori Comitis Ceſtriæ, uxori ejuſdem Roberti, Bucehebeiam, & Granteſſet, & Bradeham, & Herdewich ... pro centum libratis Terræ,* &c. *lib. C. fol.* 65. *T.* taken out of one of the Couchir-books in the Dutchy-Office at *Grayes*-Inn *London. Tom.* 2. *Honor* ſive *Soca* de *Bolingbroke: num.* 26. *pag.* 508. [Page 18.]

To the Fourth: The heirs of the Donee, being included in the Grant, are all Donees in Law: and by the ancient Law were to hold freely of the chief Lord unto the fourth degree.

2. A Second Precedent ſee in the [19]*Addenda* to my Anſwer *pag.* 3. where we may ſee that King *John* gave the Mannour of *Elleſmere* in *Shropſhire* unto *Lewellin,* Prince of North-*Wales,* in Free-marriage with *Joan* his baſe-daughter, about the Sixth year of the raign of the ſaid King: 1204. [Page 19.]

To this, Sir *Thomas* ſaith, in his *Anſwer* to my *Addenda, pag.* 7, that the Authors produced by me, do ſay that *Elleſmere* was given *in maritagio,* but do not ſay *in libero maritagio:* and that Lands may be given to one not of the blood *in maritagio,* but cannot be given in *Free-marriage* but with one that is of the whole blood.

But this diſtinction is grounded by him from a law of later ages, and not from the Law as it ſtood in *Glanvil's* time; as

anon, when I come to this point, ſhall more fully appear: For in *Glanvil's* time, there was no ſuch Diſtinction; *maritagium aliud eſt liberum, aliud Servitio obnoxium:* marriage is the *Genus:* if lands were given in marriage, acquit from all Service towards the chief Lord, then was it called Free-marriage, and
[Page 20.] the heirs were not bound to do homage, [20]to the third Degree: But if it had the Services reſerved due to the chief Lord, then the heirs were bound to do the Service, but without homage to the third heir; and then it was eſteemed not Free; *Glanvil, lib. 7. cap.* 18. and then we find no other Diſtinction of marriage, but *Free*, and *not-Free:* and the inheritance might paſſe either way: and *Maritagio* in general was often uſed for *libero maritagio* by ancient Hiſtorians, and ſo underſtood by them: and ſo it was alſo in old Deeds of thoſe Ages, when the lands therein given were acquitted from all Service, towards the chief Lord, as both *Glanvil* and *Bracton* do manifeſt: if the words were *in libero maritagio*, or *in libero Conjugio*, then it was as good, as to have ſaid *in maritagio vel Conjugio; tenendum libere & quiete, ab omni Servitio, à ſe & hæredibus ſuis, verſus capitalem Dominum:* But if the Grant were *in maritagio, Tenendum liberè & quietè ab omni Servitio, & â ſe & hæredibus ſuis, verſus capitalem Dominum;*
[Page 21.] then was it the ſame, as [21]if it had been ſaid *in libero maritagio;* as we ſee plainly by the words of *Glanvil:* Wherefore the diſtinction of *maritagium* and *liberum maritagium* is here frivolous and not material: nor in *Glanvil's* time do we find any ſuch diſtinction [of the blood, and not of the blood] as he would have, through all his book.

Sir *Thomas* alſo denieth *Joan* the wife of *Lewellin* to be baſe daughter of King *John*, contrary to the Stream of moſt of our Hiſtorians: & would have King *John* to have three daughters called *Joan:* but doth not, nor cannot prove a third *Joan* at all: See my *Reply pag.* 24, 25. and herein I will joyn iſſue with him.

3. Another Precedent ſee in my book of *Antiquities, pag.* 152, mentioned alſo in the *Addenda* to my Anſwer *pag.* 3, 4: where the Mannour of *Budiford* in *Warwick*-ſhire, and the Mannour of

Suttehal in *Worceſter*-ſhire, were alſo given to *Lewellin* Prince of *North*-Wales in Free marriage with the ſaid *Joan:* this appears by the grant of the ſaid *Lewellin* to *John* the Scot (afterwards Earl of *Che-*[22]*ſter*) of the ſaid Mannours *in libero maritagio* with *Hellen* his daughter, *cum omnibus Pertinentiis, ſicut Dominus Johannes Rex ea illi dedit in libero maritagio:* [Page 22.]

Two Poor ſhifts Sir *Thomas* makes to avoid this Precedent, in his Anſwer to my *Addenda*: the firſt, *pag.* 8, that it is not ſaid here in the deed — *Sicut Dominus Johannes Rex ea illi dedit in libero maritagio* [*cum filiâ ſuâ Baſtardâ*, nor yet *cum filiâ ſuâ.*]

2. The Second, pag. 10, that becauſe ſeveral Hiſtorians do tell us, that King *John* gave *Elleſmere* to the ſaid *Lewellin* with his daughter *Joan;* yet none of them do ſay, that theſe Mannours of *Budiford* and *Suttehal*, or either of them, were given with the ſaid *Joan.*

To the firſt; This is only a meer Cavill; for the words *cum Johannâ filiâ ſuâ* are by common intendment ſo to be underſtood, and are as ſtrongly here implyed, as if they had been expreſſed in the Deed: becauſe *Lewellin* never married any other daughter of King *John*, ſave only the ſaid [23]*Joan:* whereby he might have theſe lands in Free-marriage given to him by King *John* with any other: either other daughter, or other kinſwoman of King *John.* For to prove this, will be a ſtout Task. [Page 23.]

2. To the Second; Thoſe Authors which mention *Elleſmere*, might not know of theſe other lands which were alſo given in Free-marriage, namely *Budiford* and *Suttehall:* which yet clearly appears in the Deed of *Lewellin* to *John* the Scot; ſee the Deed at large in my Hiſtorical *Antiquities*, pag. 152. Or if they did know it, and had no occaſion to mention them; yet it is manifeſt by the Deed: ſo that the Reader may eaſily ſee what weak Anſwers are given by him. And here by the way, we may take notice that the words *in maritagio* in the writ of Livery aforeſaid, & *in libero maritagio* in this Deed, are both uſed to ſignify the ſame thing: and ſheweth the diſtinction of *maritagium* and *liberum maritagium* aforeſaid to be frivolous as to his purpoſe:

4. A fourth Precedent ſee in my *Addenda, pag.* 45. where the
[Page 24.] ſaid [24] *Joan* afterwards marrying *Robert de Audley* 14 *Hen.* 3; had lands alſo in *Shephey* then given her by King *Henry* the third.

To this Sir *Thomas* in his *Anſwer* to my *Addenda, pag.* 16, 17. ſaith, that this *Joan* was not the ſame *Joan* who was wife to *Lewellin:* but proves it not: Let the record of *Clauſ.* 14 *Hen.* 3, (as it is vouched by *Vincent*) be the Judg: And for his Objection, that the ſaid *Joan* muſt then have two Husbands living at one time, becauſe *Lewellin* dyed not till the year 1240, 24 *Hen.* 3. I have formerly in my *Addenda* given ſome Probability by Circumſtances, vouched out of *Mathew Paris* and *Knighton*, that ſhe was divorced from *Lewellin:* and great Perſons uſually married again after a divorce in thoſe ages, as we find a Precedent of *Randle* Earl of *Cheſter* and *Conſtance* his firſt wife, in my book of *Antiquities, pag.* 144, and 146; where both parties married again after their divorce, and in the life-time of each other: and if the ſaid *Joan* married *Robert Audley, Anno* 14 *Hen.* 3, then is
[Page 25.] it a ſure Argument that ſhe [25] was divorced from *Lewellin:* & whether ſhe were ſo remarried, or no, let the Authority of *Vincent* (from whom I have it) and the Record he voucheth, *clauſ.* 14 *Hen.* 3. bear him out therein, by which he muſt either ſtand or fall.

2. *The Second Point of the Ancient Law:*

That, Gifts in *Frank*-marriage of thoſe more ancient Ages, were not tyed up only to thoſe of the blood: and that Baſtards in thoſe times were reputed of the Blood.

This appears by the words of *Glanvil* aforeſaid, *ſuprâ pag.* 7, 8. Where he tells us, that lands may be given in Free-marriage with any woman whomſoever, without exception: and if the Law had then reſtrained ſuch gifts to thoſe of the blood, then ſurely he would have ſaid [with any woman of the Donours blood]: but we find not any thing in *Glanvill*, that doth ſo limit the ſame.

And *Bracton* ſaith, *lib.* 2, *ca.* 7. *Quia frater Baſtardus omninò*

extraneus eſt ei quoad Succeſſionem, licet [26]*non quoad Sanguinem:* [Page 26.] Wherefore a Baſtard was reputed of the blood in his time, though he could not Succeed: So that, Gifts of *Frank*-marriage to be tyed up to the blood of the Donour, muſt be fetched from ſome Author of later ſtanding than *Bracton*, and all thoſe ſo produced by Sir *Thomas*, are out of dores, to prove the Law to be ſo in the Age of *Glanvill*.

3. *The Third Point.*

That, though the words *in liberum maritagium* by the Law in later ages were required as a Term of Art, and punctually to be purſued in all grants of *Frank*-marriage; yet in the more ancient Ages they were not by Law ſo ſtrictly required. This is clear out of *Glanvill*, lib. 7. *ca.* 18. where he tells us, that a Grant of land with any woman *in maritagio, Habendum prædictam terram ſibi & hæredibus liberam & quietam ab omni Servitio, à ſe & hæredibus ſuis, verſùs Capitalem Dominum;* This was a good grant *in libero maritagio*, and was as good as if the words had been *in libero marita-*[27]*gio:* and therefore the words of my Lord *Cook* [Page 27.] touching *liberum maritagium* reach not the Age of *Glanvil*, ſo as always then to be tyed up to thoſe very words and no other.

4. *And therefore the Fourth Point:*

That, lands given with a daughter *in maritagio ſoluto ab omni Servitio, &c:* in thoſe more ancient ages was good, and would paſſe an eſtate of inheritance: and by Conſequence *in Connubio ſoluto ab omni Servitio* would then have paſſed an Eſtate of inheritance alſo; contrary to what my Lord *Cook* ſaith, That lands given *in Connubio ſoluto ab omni Servitio* make now but an eſtate for life: which is the law of a later Stamp, and will not reach the Age of *Glanvill:* For in thoſe Ages a grant *in maritagio* (though obnoxious to Service) conveyed an eſtate of inheritance, as well as a grant in Free-marriage: the only difference was by the words of the Grant: when the land was given in marriage free from all Service, then it was called Free-marriage: and when [28]Services [Page 28.]

were required, then it was not in Free-marriage: yet the inheritance might paſſe either way, if it were granted hereditarily.

5. *The Fifth Point:*

That, the words *in libero Conjugio* in thoſe more ancient ages was as good as *in libero maritagio:* and lands did in thoſe Ages paſſe by vertue of thoſe words accordingly. This appears by the precedent of *Geva* before mentioned: by which Deed an eſtate of inheritance paſſed to her heirs by thoſe words *in libero Conjugio:* See the Deed in my book of *Antiquities, pag.* 112, 113. and therefore Sir *Thomas* is horribly out to ſay, that the words *in libero Conjugio* did convey but an eſtate for life only: *vide pag.* 15. *ſuprà.*

So alſo we find the word (*in liberum Dotarium.*) [*Dos* is called *maritagium* in Domeſ-day-book: *Cook* on *Littleton, fol.* 31. alſo *Glanvill lib.* 7. *cap.* 1.] uſed in the raign of King *John,* as being the ſame with (*in liberum maritagium*) in a Deed in the *Couchir-*
[Page 29.] [29]book of the Dutchy-Office in *Grays*-Inne at *London, Tom.* 2. *Honor,* ſive *Soca, de Bolingbroke. num.* 26. *pag.* 508. in theſe words —

Saherus de Quency, comes Wintoniæ, Omnibus hominibus & amicis ſuis, præſentibus & futuris, Salutem. Sciatis me conceſſiſſe & dediſſe, & præſenti chartâ meâ confirmaſſe Roberto de Quency filio meo & hæredi, ad dandum in liberum (Dotarium) Hawiſiæ ſorori Comitis Ceſtriæ, uxori ejuſdem Roberti, Bucehebeiam, & Granteſſet, & Bradeham, & Herdewich, cum omnibus earundem terrarum pertinentiis, pro centum libratis terræ: —— &c. See the Deed at large in my book of Hiſtoricall *Antiquities,* pag. 133: but there it is misprinted, *Donarium,* for *Dotarium.*

6. *The Sixth Point;*

That, *Glanvill* doth ſay, that lands might be given with any woman *in libero maritagio, lib.* 7. *ca.* 18. and that *in maritagio* in thoſe ages was all one, and often underſtood for the ſame thing with *libero maritagio,* where the Deed in marriage did ac-

[30]quite the land from all Service towards the chief Lord, *à ſe & hæredibus ſuis.* To this Sir *Thomas* ſaith, in his *Anſwer* to my *Addenda pag.* 31, that Mr. *Glanvill* did not ſay, that, Lands might be given with any woman *in liberum maritagium*, but only *in maritagium.* [Page 30.]

Glanvill there ſaith, that a man may give land with any woman in marriage, ſo that it be acquit from all Service *à ſe & hæredibus ſuis, verſus capitalem Dominum.*

But land ſo given (ſaith *Glanvill*) *eſt liberum maritagium.*

Ergo, Glanvill ſaith, Lands may be given with any woman *in liberum maritagium.*

7. *The Seventh Point;*

That, Earls and great Lords in thoſe former Ages did often joyn with their Mothers (who had the Tuition of them) in Deeds and Charters, whiles they were very young, and before they attained the age of one and twenty years.

This appears by the Precedent of [31]*Richard* Earl of *Cheſter* in my book of *Antiquities, pag.* 114, 115: where he joyned with his mother in the Grant of *Wudmundeſley* to the Church of *Abbington* nigh *Oxford*, whiles he was yet but twelve years old: concerning which Grant the book of *Abbington, fol.* 147 ſaith thus — *Ipſe Comes benefactum extulit, & ſuo deſcripto roboravit: quod deſcriptum Sigillo quidem matris Signari conſtitit: nondum enim militari baltheo cinctus, materno Sigillo literæ quælibet ab eo directæ includebantur: hâc de re quod eò annotatur, Comitiſſæ potius quam Comitis Sigillo ſignatur.* Upon which words of the Monk of *Abbington, Selden* obſerves in his *Titles of Honour, pag.* 786, that whoſoever was Knighted (though before the Age of one and twenty) he was eſteemed as of full age inregard of Wardſhip or other Tuition: and the uſe being, that ſuch Great Lords were often Knighted before they were of full age: now this Earl not having as yet received the honour of Knighthood, but being a child and under the [32]Tuition of his Mother, for that reaſon uſed her Seal rather than his own, and to other his letters alſo. [Page 31.] [Page 32.]

Sir *Thomas Manwaring* ſaith in his *Anſwer* to my *Addenda*, *pag.* 49, that *Hugh Cyveliok*, Earl of *Cheſter*, joyning with his mother *Maud* in the grant of *Stivinghale*, as we find it in *Monaſticon Anglicanum*, the third part, *pag.* 226, was not in a capacity to Seal a Deed till he was one and twenty years of Age.

Let the Reader chooſe now whether he will believe Sir *Thomas*, or ancient Precedents, whereof that of *Richard* Earl of *Cheſter* is by me before mentioned, and *Selden's* opinion thereof: for Earl *Hugh*, joyning here with *Maud* his mother in the Grant, ſhows clearly that he was but a child at this time and under the tuition of his Mother: and according to the manner of thoſe ages joyned in the grant with his Mother before he attained the age of one and twenty years: howbeit we have now no ſuch Cuſtome allowed at this day: ſee more in my *Reply*, *pag.* 87, 88.

[Page 33.] 33 So that all thoſe Caſes of our modern Law produced by Sir *Thomas Manwaring*, will not reach the Age of *Amicia*, nor advantage her cauſe one jot, nor prove the Age of *Hugh Cyveliok* to be near what Sir *Thomas* would have it to be, but rather the contrary.

And now I come to the impertinent Caſes of Law, as they be vouched by Sir *Thomas*, which are nothing at all to the Point for which they are produced.

1. One we have in his *Anſwer* to my *Addenda*, *pag.* 13, 14, 15: that, when lands are given with a woman in *Frank*-marriage (who is the cauſe of the Gift) the Husband hath not the inheritance of ſuch lands, nor ſo much as an eſtate for life therein, unleſs he be Tenant by the curteſy of *England:* for which he citeth *Cook* upon *Littleton fol.* 22. *a. Fleta. lib.* 3. *ca.* 11. *Bracton lib*, 2. *ca.* 11. and *Glanvil, lib.* 7. *ca.* 18: *ergo, Hellen* muſt be heir by a former wife.

I grant all the cotations; but he runneth on a falſe Ground:

[Page 34.] for he 34 ſuppoſeth *Hellen* to be daughter of *Lewellin* Prince of North-*Wales* by a former wife, which I utterly deny: for, that he neither doth prove, nor can prove: I affirm, *Hellen* to be daughter of *Lewellin* by *Joan* baſe-daughter of King *John:*

and ſo the ſaid *Joan*, being the cauſe of the Gift, thoſe lands might lawfully paſſe to *Hellen* in Free-marriage according to the Opinion of the Lawyers by him cited: And ſo his Law-Caſe (which is impertinently here urged) is totally out of *dores:* It is, as if I ſhould have ſaid, that it is 20 miles from *Saint-Albans* to *London*, but he will prove it to be 160 miles between *London* and *York*. I have alſo proved *Hellen* to be the daughter of the ſaid *Joan* in my *Reply* to his *Anſwer*, *pag.* 29. ſee alſo *pag.* 38, 39, of my *Reply*.

2. Another impertinent Parcel of Law we have in Sir *Thomas* his *Defence of Amicia*, *pag.* 59. quoting *Fleta*, *lib.* 6. *ca.* 39. *Sect.* 14. *Si autem Poſt mortem alicujus apponatur Baſtardia, non allocatur: cum defunctus ad talem exceptionem reſpondere non po-*
[Page 35.] *terit:* Now if a Baſtard cannot be proved a Baſtard immediately after his death, becauſe he cannot anſwer for himſelf; what reaſon is there to charge *Amicia* with Baſtardy ſo many hundred years after her deceaſe.

See the wild impertinency herein: Becauſe a man ſhall not be allowed in a Court to prove a Baſtardy after the death of any Perſon to the outing of his heir, becauſe ſuch perſon cannot anſwer to the exception when he is dead; therefore no man in writing a Hiſtory ought to call any man a Baſtard after his death, though he hath been ſo called from time to time by ſeveral Hiſtorians, or though the ſame be certainly proved either by Hiſtory or Record: is not this Peece of Law well urged to the Point?

3. A number of other impertinent Peeces of Law we find in his *Defence* of *Amicia*, from *pag.* 34. to *pag.* 41. Unto all which, it were a good general Anſwer (were none of them at all impertinently urged) that, Whatſoever is alledged for Law by any
[Page 36.] Lawyer of late ages, doth not at all prove the ſame to be the Law in the Ages of *Glanvil* and *Bracton*, two of the moſt ancient Authors of our Law ſince the *Norman* Conqueſt, unleſs the ſame alſo do appear by the words of *Glanvil* or *Bracton:* and ſince

whoſe times, the Law in Sundry Particulars is varyed and altered: But I will trace theſe impertinent Parcels, more particularly.

Firſt, *pag.* 34. of his *Defence* of *Amicia*, he tells us, that the words *cum aliquâ aliâ quâlibet muliere* (which are the words of *Glanvil*) muſt be only underſtood of ſuch a woman as is capable of a Gift in a *Frank*-marriage: which a woman that is a Baſtard, or not of the blood, *&c.* is not: For in theſe kind of Gifts, as Mr. *Bracton* ſaith, *lib.* 2. *ca.* 11, the land ſo given is *liberum Tenementum uxoris, & non viri, cum non habeat niſi Cuſtodiam cum uxore.*

Is not this a worſhipfull reaſon to inſinuate here, that *cum aliquâ aliâ quâlibet muliere*, in *Glanvill* muſt be underſtood of any woman of the blood, becauſe *Bracton* ſaith, that land given
[Page 37.] [37]with a woman in *Frank*-marriage is the Free hold of the wife and not of the Husband, ſince he hath nothing but the Cuſtody of ſuch land with his wife? So it would be, although the wife were not of the blood of the Donor: *John of Oakes* his wife muſt needs be of the kinred of the Donor, for *John of Oakes* is a very honeſt man.

Secondly: *pag.* 34 of his *Defence* of *Amicia* alſo, Sir *Thomas* conceives that *Glanvil* hath immediately contradicted himſelf, unleſs *cum aliquâ aliâ quâlibet muliere*, by him is underſtood for any Woman of the Blood of the Donour: why ſo? becauſe in the ſame Chapter, *Scilicet lib.* 7. *ca.* 1. and the next words, he tells us, that, none can give land to another *in remunerationem Servitij ſui* to hold good after the death of the Donour, unleſs there be *Seiſin* given in the life-time of the Donour: which is untrue, if a man having a mind ſo to reward his Servants, can give lands with his Woman-Servant to a ſtranger, or with his Woman-Servant to his Man-Servant in Free-marriage.

[Page 38.] [38]Is not here alſo a great connexion of Reaſon, that *Glanvill* hath contradicted himſelf? becauſe he ſaid before, any man may give land with any woman whomſoever in *Frank*-marriage; and now ſaith that, A man cannot give land to another *in remunerationem Servitij ſui* to hold good after the death of the Donour without *Seiſin* given in the life-time of the Donour: but let us ſee

the words *lib. 7. ca.* 1. *Quilibet etiam, cuicunque voluerit, poteſt dare quandam partem ſui liberi tenementi, in remunerationem Servitii ſui, vel loco religioſo in Elemoſynam, ita quod Si donationem illam Seiſina fuerit Sequnta, Perpetuò remanebit illi (cui donata fuerit terra illa) & hæredibus ſuis, ſi jure hæreditario fuerit eis conceſſa. Si verò Donationem talem nulla Sequnta fuerit Seiſina, nihil Poſt mortem Donatoris ex tali donatione contra voluntatem hæredis efficaciter peti poteſt, Quia id intelligitur Secundum conſuetam regni interpretationem potius eſſe nuda Promiſſio, quam aliqua vera promiſſio vel Donatio:* So that here *Glanvill* ſpeaks of a grant *in re-*[39]*munerationem Servitii*, and before of a grant in [Page 39.]
Free-marriage; which are two ſeveral kinds of Grants: To a Deed *in remunerationem Servitii* there muſt be Seiſin, if the land be granted away hereditarily; but without Seiſin it cannot hold good after the Donour's death: But where is the contradiction? if he had been verſed in the Rules of Logick, it would have told him that contradictories cannot both ſtand together at once and in the ſame reſpect, *Simul & Semel*, as the School ſpeaks: *Et, contradictoriorum una pars ex neceſſitate eſt vera;* both parts cannot poſſibly be true: but here both parts are true: A man may give lands with any woman in Free-marriage, and a man could not grant lands *in remunerationem Servitii* to hold good after the death of the Donour without livery of Seiſin: But Sir *Thomas* ſaith this laſt is untrue, if a man may give lands to his Servant in Free-marriage. I ſay, a man might both give lands to his Servant in Free-marriage, and by another Deed give [40]other lands to the ſame Servant in reward of his Service, [Page 40.]
and both are good by the Authority of *Glanvil;* howbeit, there muſt be *Seiſin* upon the Deed *in remunerationem ſervitii;* otherwiſe it would not hold good after the Death of the Donour, as *Glanvil* there ſaith. See the impertinency of what Sir *Thomas* here brings-in, for a proof, that *cum aliquâ aliâ quâlibet muliere*, is, underſtood by *Glanvil* himſelf for any woman of the Donours blood: Becauſe a man could not grant lands to his Servant *in remunerationem ſervitii ſui* to hold good after the Donour's death

without livery of Seiſin made; *ergo*, Glanvil underſtands *cum aliquâ aliâ quâlibet muliere* with a woman only of the Donour's blood: and if a man could grant lands in Free-marriage with a Servant-Woman, then he might reward his Servant after his Death; which he could not doe by his Deed *in remunerationem ſervitii ſui* without Seiſin: what, then *John of Oakes* cannot Sell away his land for ever, becauſe he is but tenant for life: *ergo,*

[Page 41.] *John of Oakes* cannot [41] make a Leaſe for three lifes whereunto by Deed he is empowred:

And then what is there further added *pag.* 35. by Sir *Thomas,* out of *Cook* upon *Littleton,* that If lands be given in *Frank-marriage* according to Law, there needs no *Seiſin:* but where they are given contrary to the Law, *viz.* not to one of the Donor's blood, *Seiſin* doth only make it an Eſtate for life: But this of *Cook* is to be underſtood of the Law in later ages, and not of the Law in *Glanvil's* time: for we find nothing at all in *Glanvil* or *Bracton,* tying it up to the Donour's blood only.

Thirdly, *Pag.* 36 of his *Defence* of *Amicia,* he ſaith out of *Cook* upon *Littleton fol.* 21. *b.* that, if the King gave land with a woman of his Kindred to a man in Free-marriage, and the woman dye without iſſue; the man in the Kings Caſe ſhall not hold it for his life, becauſe the woman was the Cauſe of the gift: but it is otherwiſe in the Caſe of a Common Perſon:

[Page 42.] This is as impertinent, as any of [42] the reſt: for we are now about the Perſons to whom Gifts in *Frank*-marriage might in thoſe elder ages be given, and not about the reverſion of lands ſo given.

Fourthly, in the ſame *Page* 36, he ſaith out of *Fitz Herberts* Grand Abridgment 9 *Hen.* 3. *Dower* 202. *oue une feme* — my Lord *Cooke* makes no difference between thoſe words, and theſe [with a Woman of his kindred]: and by the ſame reaſon *Glanvil's* words *cum aliquâ aliâ quâlibet muliere,* are to be underſtood [with any Woman of his kindred onely]: and *pa:* 37, he quotes the Author of the Book called *The Law's Reſolutions* of Womens rights, Printed 1632, who ſaith, that in old time, Gifts of *Frank-*

marriage were more frequent than at this day: But now as then, if a man Freely without any money, or other Conſideration, ſave only love or natural affection, give lands to another man with a woman, which is Daughter, Siſter, or Coſin to the Donour in *Frank*-marriage, the words [*Frank*-marriage] make an eſtate of inheritance, &c.

[43]Obſerve, The Lord *Cook* expounds the words *oue une feme* to be a woman of the Donour's Kindred only: and the other Author, living 1632, ſaith, In old time gifts in *Frank*-marriage were more frequent then in our days: what of all this? Here is nothing to the point: doth either of theſe prove it to be law in the Age of *Glanvill*, that lands could not be given to any in *Frank*-marriage but thoſe of the kindred only? doth not *Glanvill* himſelf ſay, that ſuch gifts may be made with any woman whomſoever, without any reſtraint at all? how can then the Lord *Cook*, or any other late writer, who only ſpeak of the Law as it was taken in later ages, reſtrain *Glanvills* own words? None of them affirm it to be Law in *Glanvills* time: and, if they did; they ought to prove it; or elſe no man is bound to believe the Lord *Cook*, or any other in that caſe. [Page 43.]

Fifthly, *Pag.* 38, 39. Sir *Thomas* endeavours to give another reaſon why the words of *Glanvill* [*cum aliquâ aliâ quâlibet muliere*] muſt be un-[44]derſtood of a Woman of the blood of the Donour only: becauſe the Author of the old Treatiſe, commonly called *Fleta, lib.* 3. *ca.* 11 *de Donationibus in Maritagiis*, doth imply that theſe kind of Gifts muſt be made to them of the kinred: his very words are theſe — *Eſt autem quoddam maritagium, liberum ab omni Servitio, Solutum Donatori, vel ejus hæredibus uſquè ad tertium hæredem, vel uſquè ad quartum gradum, faciendum: & debent gradus ſit computari, ut Donatorius, primum faciat gradum; hæres ejus, ſecundum gradum; hæres hæredis, tertium; & hæres ſecundi hæredis quartum, qui quidem tenebitur ad Servitium ut ad homagium; priùs autem minime, ne Donator vel ejus hæredes per homagii acceptionem à reverſione repellantur: ſed, in quarto gradu, pro eo quòd tunc vehementer præſumitur, quod terra non* [Page 44.]

eſt, pro defectu hæredum Donatoriorum, reverſura, quia & ſi Propinquos hæredes non habeat, vel, cum habeat & defecerint, ad Donatorem vel ejus hæredes (qui homagium caperint) non erit
[Page 45.] *terra reverſura, dum tamen aliquis remotus de con-*[45]*ſanguinitate appareat qui jus in hæreditatem poterit vindicare; alioquin evaneſcit homagium, & revertetur: Et cum de Sanguine homagium factum fuerit, ex tunc obligatur homo ad Servitium: quiâ ſervitium ſemper ſequitur homagium*, &c.

He that can find out of this, any thing of Reaſon pertinent to the Point, let him; I am ſure I cannot: In all theſe words of *Fleta*, here is nothing at all touching Kinred or conſanguinity, but what relates to the blood of the Donee. He ſaith indeed, that although the Donee in Frank-marriage hath no near heirs; or if he hath, and thoſe heirs fail, the land ſhall not revert to the Donour, or his heirs, who ſhall take the homage, whiles any, remote in conſanguinity, appears who can challenge the right of the inheritance: otherwiſe the homage vaniſheth, and the land ſhall revert: and when homage ſhall be made by one of the blood, from that time the Perſon is obliged to the Service: for the Service always follows the homage, *&c.* The Point is here,
[Page 46.] that any man [46]may give with any woman whomſoever Land in Free-marriage, as *Glanvill* ſaith: and here he brings in an impertinent proof out of *Fleta*, that Lands once ſo given cannot revert to the Donour, whiles there is any of the blood of the Donee to inherit: Is not here a pretty reaſon why [*aliqua alia mulier* in *Glanvill*,] muſt be tyed up to one of the Kinred? where he ſpeaks of a gift in Free-marriage, and *Fleta*, of the reverſion of ſuch land after a Gift made in Free-marriage: for every body knows, that lands muſt needs revert, if there be no heirs of the blood to inherit.

Sixthly, *ibidem pag.* 39, See here another impertinent proof by Sir *Thomas* out of *Bracton, lib.* 2. *ca.* 7. *par.* 3.—*Et Sciendum quod terra datur aliquando antè ſponſalia & propter nuptias, à patre mulieris, vel alio Parente, ipſi marito cum muliere aliquâ, vel utrique Simul, Scilicet tali viro & uxori ſuæ (quod idem eſt)*

& eorum hæredibus, vel alicui mulieri ad ſe maritandam, &c. Which in Sir *Thomas* his apprehenſion is as much as to ſay, that this kind of Gift can only be made by the Fa-[47]ther, Mother, or ſome other Kinſman: for the word *Parent* in latine and French hath oftentimes that Signification: and of this opinion is my Lord *Cook* upon *Littleton fol.* 21. *b.* where he ſaith that, one of thoſe things incident to *Frank*-marriage is, that the woman that is the cauſe of the Gift, be of the blood of the Donour: and for this he citeth in the margent (among other Proofs) *Bracton, lib.* 2. *ca.* 7. and *Glanvill lib.* 7. *cap.* 1. [Page 47.]

Let any ſober man be judge, whether here be a word to prove what Sir *Thomas* alledgeth it for: but rather the contrary: for a Father, or other Parent, may give lands with any woman in expreſs termes, not to any of his kindred only, no ſuch word at all: but it may be made to any woman alone *ad ſe maritandam:* and though Sir *Tho.* ſaith, that, in his apprehenſion, it is as much as to ſay, that this kind of Gift can only be made by the Father, Mother, or ſome other Kinſman; yet I believe it cannot be ſo in the apprehenſion of any other by the words of this Authority here produced by him: It is [48]only a wild phanſy, nothing of Reaſon can be drawn out of any thing in *Bracton* to ſupport it: [Page 48.]

For the Opinion of the Lord *Cook*, I have ſhewed over and over again, that he ſpeaks only how the Law is taken now, and in the later ages; and is not underſtood by him of the Law in the more ancient ages of *Glanvil* and *Bracton:* For then, the Law in this point appears to be contrary, even by *Glanvill* and *Bracton* both, as I have before clearly proved:

And for the Lord *Cook's* citing of *Bracton*, and *Glanvill*, in the Margent, as Authority for what he there ſaith; if he maketh a falſe cotation, or ſuch as is not to the Point, neither I, nor any man elſe are bound to believe the Lord *Cook*, more then any other.

And thus I have briefly run through all the improper and impertinent Law-Caſes of Sir *Thomas Manwaring*, which he called

in to little Purpoſe, but to amuſe the Reader: which being all
[Page 49.] drawn out of his book lately pub-[49]liſhed, and ſet apart from the reſt, there will remain behind but a weak and poor *Defence of Amicia*, either from Hiſtory, Records, or Reaſon, the moſt proper Judges in this Caſe: & it is very obſervable, that he rarely gives an Anſwer to any material Point throughout all his books without a ſcrap of Law in the Tayle: For ever and anon he leaps into Law (as it were over hedg and ditch) as a ſhelter; but it cannot help him: and runneth from one thing to another, not keeping cloſe to the Point, and catching at every ſmall impertinent thing as the ingenious Reader may eaſily perceive.

And whereas in his *Defence of Amicia, pag.* 25. (as he himſelf hath told me) three Judges have given their Opinions that *Amicia* was legitimate: and alſo, *pag.* 67, tells us that beſides thoſe Judges (of whom I had heard) who had formerly ſeen his Deeds, and amongst others, that worthy and Judicious Perſon, *William Dugdale* Eſq; our *Norroy*, King at Arms, is of the ſame
[Page 50.] Judgment, as will appear in his Hiſtorical Diſ-[50]courſe of the *Baronage of England* (which will be ſhortly ready for the Preſſe) in which, from the Authorities and Reaſons there briefly cited, he concludes *Bertred* was a Second wife, and that *Amicia* was a lawful daughter of Earl *Hugh*, by a former wife, though it cannot be known who that wife was... *&c.*

I ſay, it may be, that upon a ſlight enquiry, not ſearching into the Reaſons which may be alledged *Pro* and *Con*, and eſpecially in putting the Queſtion, whether lands can paſs with a Baſtard-daughter legally *in libero maritagio?* every Lawyer will now tell us, that they cannot: But I would be glad that either he, or any other that hath asked their Opinions for him, will ſhow me, or produce in Publique, The Opinion of any one Judge of *England* under their own hand to the main Point of Law, *viz.* Whether lands did not, nor could not paſſe, in the Age of *Glanvill* (when the Deed to *Amicia* was made) with Baſtard-daughters *in libero*
[Page 51.] *maritagio?* I ſay, I would [51]fain ſee any ſuch Opinion, that lands

could not be ſo given in the Age of *Glanvill, in libero maritagio,* atteſted under the hand of any one learned Judge or Lawyer :

And for what he there ſaith of Mr. *Dugdale's* Opinion, intended ſhortly for the Preſſe, I wiſh Mr. *Dugdale* would ſhow me any ſuch opinion of any Judge under his hand to the Queſtion aboveſaid : otherwiſe it is nothing to the Purpoſe : and whereas he alledgeth the Opinion of Mr. *Dugdale,* that *Amicia* was a daughter of a former wife ; if he doth not clearly prove by good Authority and Reaſon, that the Earl had a former wife (which I utterly deny) *Amicia* muſt certainly be a Baſtard ; nay he muſt prove alſo in ſtrictneſs, that *Amicia* was daughter of that former wife : All which muſt be ſubmitted to Judicious Readers : *Hic labor, hoc opus eſt.*

Mobberley
1ſt. Maij, 1674.

FINIS.

[53] *An Advertiſement to the* [Page 53.]

READER.

SInce theſe two Books were Printed, I have received the Copies of two Records in the *Tower* at *London;* which till now I could not procure: one of which is this following.——

Ex Rotulo Chartarum de anno ſexto Regis Johannis, numero 32.

Charta Lewelini
Principis Walliæ.

Johannes Dei Gratia, &c. Sciatis, Nos dediſſe, conceſſiſſe, & hac Charta noſtra confirmaſſe Lewelino Principi Northwalliæ, in maritagium [54] *cum Johanna filia noſtra Caſtrum de Elleſmara cum omnibus pertinentiis ſuis: Tenendum ei, & hæredibus ſuis qui de eo & prædicta filia noſtra exierint, de nobis & hæredibus noſtris in liberum maritagium, ſalvis Conventionibus inter nos & ipſum de terra & eodem maritagio factis: Et nos & hæredes noſtri prædictum Caſtrum cum pertinentiis ſuis ei, & prædictis hæredibus ſuis, Warrantizabimus contra omnes qui in eo jus clamare voluerint: Quare Volumus, &c. quod prædictus Lewelinus & prædicti hæredes ſui habeant & teneant prædictum Caſtrum de Elleſmara* [Page 54.]

cum omnibus pertinentiis ſuis, bene & in pace, libere & quiete, integre, in boſco & plano, in pratis & paſcuis, in viis & Semitis, in aquis & molendinis, in Stagnis et Vivariis, in Moris & Mariſcis, et Piſcariis, et in omnibus aliis locis et rebus, cum omnibus libertatibus et liberis Conſuetudinibus ad illud Caſtrum pertinentibus, ſicut prædictum eſt. Teſtibus Domino Henrico Cantuarienſi Archi-
[Page 55.] *epiſcopo, G. filio P. Comite Eſſexiæ,* [55] *Willielmo Comite Sarum, Johanne de Curſy: Datum per manum H. de Wellen. Archidiaconi Wellenſis a Apud Dovorum,* 16 *die Aprilis, anno,* &c. 6.

Convenit cum Recordo, Gulielmus
Ryley Deputatus Algari May
Militis, Februario, 1674.

By which Record it plainly appears, that this Grant to *Lewellin* with *Joane* Daughter of King *John*, was a Grant *in liberum maritagium* (in expreſs words) of the Caſtle of *Elleſmere* in *Shropſhire*, dated the 16 day of *April*, in the ſixth year of the Raign of King *John;* which falleth in the year after the Incarnation of Chriſt 1204.

So that this Record cleareth me of what Sir *Thomas Manwaring* chargeth as an errour in me, when I ſaid King *John* gave *Elleſmere* with *Joane* his Daughter *in libero maritagio*. See my Reply, *page* 19, 20.

[Page 56.] It alſo ſhews the ſeveral errours of [56] Sir *Thomas Manwaring*, in theſe Particulars following.

1. To paſs by his abſurd and unſcholar-like diſtinction, whereof the Members are co-incident, it ſhews his diſtinction of *Maritagium* and *liberum Maritagium* here to be frivolous: and ſhows alſo, that by the words *(in Maritagium)* in the beginning of this Deed, the ſame thing is underſtood and meant as by the words *(in liberum Maritagium)* in the body of the ſame Deed.

And ſo alſo it is underſtood in the Writ to make Livery of *Elleſmere*, dated at *Worceſter* 23 *die Martii, anno ſexto Johannis*

Regis, Rot. Clauſ. 6. *Johannis, membrana* 7. See in my Reply, page 20, 21.

2. Again, this Record ſhews the Grant of *Elleſmere in liberum Maritagium*, to be an abſolute Eſtate of Inheritance, and not an Eſtate for Life only, as Sir *Thomas* doth fallaciouſly inſinuate from the Livery made. See in my Reply more at large, *page* 22, 23, 24.

3. Thirdly, This Record doth [57]clearly confute the Opinions [Page 57.] of thoſe Judges and Heralds (if there were any ſuch) who ſhould affirm, that Lands could not paſs in free Marriage with Baſtard-daughters in the Raign of King *John*, and thoſe more ancient Ages: for this *Joane*, the wife of *Lewellyn*, was Baſtard-daughter of King *John*, as is clearly proved by the general conſent of our Hiſtorians. See my Reply, page 38, 39, 40. alſo Sir *Tho. Manwaring*'s Law-Caſes miſtaken, pag. 49, 50, 51.

And if thoſe Judges and Heralds, whom Sir *Thomas* ſpeaks of, did only give their Opinions that they conceived *Amicia* was no Baſtard, they might eaſily be deceived, not diving into the Records and Hiſtories of thoſe more ancient Ages: for Opinions not ſupported by good reaſon, are of little weight; and I am ſure ſome very good Lawyers and Judges are of opinion, that in thoſe elder Ages Lands did paſs with Baſtards in free Marriage, as well as with lawful Daughters. And indeed it is plain by ancient Precedents of thoſe for-[58]mer Ages, that the Law was [Page 58.] then ſo taken. And let the Law be what it will, *Amice* was certainly a Baſtard: for to argue thus, *Amice* had Lands given with her in free Marriage, *ergo Amice* was no Baſtard; this is no ſure conſequence at the beſt: but, I ſay, it is plain by ancient Precedents, that the Law in thoſe former Ages did allow it: and let other men be of what opinion they pleaſe, I am ſure I have neither ſeen nor heard anything as yet to convince my reaſon to the contrary: And all the Heralds in *England* cannot clear *Amicia*, nor prove her lawful daughter of Earl *Hugh*, nor prove that Earl *Hugh* ever had any other Wife at all, ſave *Bertred* only: and that ſhe was no daughter by *Bertred*, it is confeſt on

all ſides; for then ſhe would have ſhared the Lands of the Earldom with the other Coheirs.

And therefore if *William Dugdale* Eſquire, our *Norroy*, ſhall in his Hiſtorical diſcourſe of the Baronage of *England*, (as Sir [Page 59.] *Thomas Manwaring* tells us) forthwith conclude *Bertred* [59]to be a ſecond Wife, and *Amice* to be a lawful daughter of Earl *Hugh* by a former Wife, or if he thinks fit to cite the Opinions of other perſons therein; I ſay, it will be neceſſary to give his Reaſons, as well for his own Opinion, as for the Opinions of others particularly whom he ſhall ſo mention, for the better clearing of the truth; becauſe every man will then ſee, whether the Reaſons be ſubſtantial or no: for if they be ſubſtantial, they will be convincing in themſelves; if not ſubſtantial, the truth may be better cleared in ſhewing their inſufficiency; and if ſuch Reaſons have not already been fully cleared, the truth may be further illuſtrated hereafter: but if he ſhall alledge only Opinions, and no Reaſons for them, it will be as if I ſhould alledge on the contrary part, that there are hundreds who are of opinion that *Amice* was a Baſtard; which without good Reaſon or Authority will be little ſatisfactory: for Opinions not ſupported by good Reaſon, are of ſmall moment, and not to be valued.

[Page 60.] [60]The other Record, which I lately received, is this.

Chartæ 14. *Hen.* 3. *membrana* 5.

Pro Roberto de Audley.

Henricus Rex ſalutem. Inſpeximus Chartam Richardi de Landa in hæc verba.

Sciant præſentes et futuri, quod ego Ricardus de Landa dedi et Conceſſi et hac præſenti Charta mea Confirmavi Roberto de Audley et hæredibus ſuis in liberum maritagium cum Johanna filia mea centum et tres Solidatas et quatuor deneratas terræ cum Pertinentiis in Inſula Scapeya. Hiis Teſtibus, &c.

By this Record it appears that *Robert de Audley* had Lands

in the Iſle of *Shepey* in free marriage with *Joane* daughter of *Richard de Laund:* but not a word that *Robert de Audley* married *Joane,* ſometime Wife of *Lewellyn* Prince of *North Wales.*

So that whereas in my *Addenda,* [61]page 4. and alſo in my Reply, page 42, 43, 44. and in Sir *Thomas Manwaring*'s Law-Caſes miſtaken, page 24. I urged the words of *Vincent,* who affirmed *Robert de Audley* to have married *Joane* ſometime Wife of *Lewellyn* Prince of *North-Wales;* I find now by this Record (which he vouched) that *Vincent* hath groſly miſtaken the Record, and hath baſely abuſed all his Readers in this particular; and that it is falſe which he ſaith: for *Robert de Audley* never married *Joane* Princeſs of *Wales,* baſe daughter of King *John.* And ſo much for *Vincent*'s miſtake. [Page 61.]

After page 82. *of my Reply, it ſhould immediately have followed thus.*

I have obſerved, that when Chaplains or Clergy-men did make their Deeds to others, they never, or very rarely did apply the word *(Dominus)* to themſelves in their own Deeds: as, *Ego Dominus A. B. Capellanus dedi,* &c. for ſuch examples are very rare, if any at all.

[62]But in Subſcriptions of the Witneſſes put uſually in the concluſion of ancient Deeds, or in Deeds made by other men unto Chaplains and Clergy-men as Parties or Feoffees, in ſuch the word *(Domino)* is frequently applyed in old Deeds unto the Names of Chaplains by the Clerk or Writer of ſuch Deeds; as may appear by theſe examples following. [Page 62.]

Sciant præſentes et futuri, quod ego Willielmus de Hallum de Comitatu Ceſtriæ dedi.... Dominis Gilberto de Gropenhale et Simoni del Wood Capellanis, totum manerium meum de Hallum in villa de Newton, &c. *Datum* 10. *Hen.* 4. 1410. *Lib. C. folio* 202. *num.* 43.

Sciant præſentes et futuri, quod ego Gilbertus de Gropenhale Capellanus dedi.... Elizabethæ, quæ fuit Uxor Willielmi de Hal-

lum, omnes terras meas in villa de Newton .... ad terminum vitæ ſuæ, &c. *Datum* 3. *Hen.* 5. 1416. *Lib. C. folio* 202. *num.* 46.

[Page 63.] [63]The Originals of theſe Deeds do now remain among the Evidences of the Lord *Kilmorey* concerning *Hallum.*

So that we ſee, though the word *(Domino)* be applied to Chaplains by the Clerks or Writers of the Deeds, yet the word *(Dominus)* was not applied by the Chaplains to their own Names in their own Deeds: infinite other examples of this nature occur in ancient Deeds.

But Knights very anciently did apply the word *(Dominus)* to their own Names in their own Deeds: as, *Ego Dominus A. B. dedi*, &c. or *ego Dominus A. B. miles dedi*, &c. and ſo alſo the word *(Sir)* is applied to their Names in their own Deeds even to this day.

So likewiſe though the word *(Domino)* was often applied in old Deeds before the time of *Edward* the firſt, unto Gentlemen of the better ſort and quality, who were no Knights, as well in the Subſcriptions of Witneſſes, as alſo when they were named as
[Page 64.] parties to whom ſuch Deeds were [64]made and granted; yet in their own Deeds to other men they never applied the word *(Dominus)* to their own names: as, *Ego Dominus A. B. dedi*, &c. unleſs ſuch perſon was *revera*, a Knight, as we may ſee in *Edmund Lacy*, page 79. of my Reply; and alſo in *Rafe Manwaring* ſometime Judge of *Cheſter*, page 6, 7. of my Anſwer to the Defence of *Amicia;* and alſo in *Geffrey Dutton*, page 11, 12. of the *Addenda* to my Anſwer.

7. The word *Dominus*, &c. and ſo as it followeth in the 83. page of my Reply.

And ſo much, courteous Reader, by way of Advertiſement, I have thought fit to add.

3. Martii, 1674.

F I N I S.

AN

ANSWER

TO

Two Books:

The firſt being ſtiled

A REPLY

TO

Sir *Thomas Mainwaring*'s Book,

ENTITULED,

AN ANSWER

TO

Sir *Peter Leiceſter*'s Addenda;

The other ſtiled

Sir *Thomas Mainwaring*'s

LAW-CASES MISTAKEN.

Written by the ſaid Sir T. M.

LONDON,

Printed for *Sam: Lowndes*, over againſt *Exeter* Houſe in the *Strand*. M.DC.LXXV.

[1]TO THE [A 3, recto.]

READER.

Courteous Reader,

Upon Saturday the 12th *of* December *laſt, I received from Sir* Peter Leyceſter *a Book, or Books, thus called,* viz. *Two Books: The firſt being ſtiled, A Reply to Sir* Thomas Mainwaring's *Book, Entituled, An Anſwer to Sir* Peter Leyceſter's Addenda; *The other ſtiled, Sir* Thomas Mainwaring's *Law-caſes Miſtaken: And although the one of theſe was dated the* 14th *day of* April 1674. *And the other the firſt day of* May *following; yet, they came not out in Print till* Michaelmas *Term in the ſame year. When I had peruſed the ſaid Books, I found the* [2]*latter, to be the ſame in effect with the former, and* [A 3, verso.] *ſcarce met with any thing in either, which he had not had in ſome of his Books before, and had been formerly anſwered; ſo that it was much more difficult to find out any new Matter, than to give an Anſwer to the ſame.*

I believe the Reader (*when he remembers how Sir* Peter, *in his Anſwer to my Defence of* Amicia, *did declare,* That he had taken leave for ever of this Trivial Controverſie) *will very much wonder to find him in Print, twice ſince then, upon the ſame Subject; But for that, he ſuppoſeth*

he hath a good Excuſe: For he tells us in his Epiſtle to the Reader, before the firſt of his two Books, That although his reſolution then was (viz. *when he writ his Anſwer to my Defence of* Amicia, 1673.) to have writ no more about
[A 4, recto.] [3]it, (eſpecially if I had let him alone;) yet now, contrary to his former intention, he is neceſſitated thereunto in his own defence, for the removal of thoſe unjuſt obloquies which are ſince caſt upon him; *Whereas his Servant Mr.* Thomas Jackſon, *in a Letter, (writen, as he ſays, by the Command of his Maſter) did ſignifie to me, that his Maſter would write again, and this, before I had printed one word of my Reply: ſo that if we find him thus ſtumbling at the firſt, it is well, if we do not take him oft tripping, before he comes to his journies end. And for his writing again this ſecond time, he hath an excellent Reaſon; For he ſays, pag.* 16. I have publiſhed another Book ſince, and have (therein) taxed him already for not being juſt to his word;
[A 4, verso.] ſo that he cannot now incur a greater Cenſure [4]from me herein, though he alter his former reſolution and intention, and write in his own defence, ſo long as he ſhall henceforth judge it neceſſary: *ſo that he is reſolved to give me juſt cauſe to cenſure him, if he had not done ſo before. He alſo endeavors to apply to me that ſaying of the angry Man in the Comedy, which he mentions in his ſaid* Epiſtle; *but yet he is conſcious I will ſay as much of him, and his* Reply, *and thereupon ſubmits it to the Reader; in which I ſhall willingly cloſe with him, and eſpecially if it be a Reader who is well acquainted with his temper and mine: But it is high time to leave the* Epiſtle, *and to proceed to give an* Anſwer *to his ſaid Books.*

[1]A N [Page 1.]

ANSWER

TO

Sir *Peter Leyceſter*'s

TWO BOOKS, *&c.*

I Doubt not but the Judicious Reader hath long ſince obſerved what ſtrange kind of Arguments Sir *Peter Leyceſter* doth inſiſt upon, both in theſe laſt, and in all other his former Books; For with all the confidence imaginable he ſeveral times affirms, that Mr. *Glanvil* ſays, That Lands might be given with any Woman *in Liberum Maritagium:* whereas he only ſays, That they may be given *cum qualibet muliere in Maritagium*, as you may ſee in the 39, 40, and 41 pages of my Reply, where Mr. *Glanvil*'s words are expreſly ſet down.

He alſo ſays, That he hath proved *Geva* to be a Baſtard, out of an Hiſtorian [2]Contemporary, by which *Ordericus Vitalis* is [Page 2.] meant, and yet the ſaid *Ordericus* hath ſaid no ſuch thing.

He alſo affirms, That the Common Law is now alter'd other ways than by Act of Parliament, without quoting any Author for what he ſays, although the Common Law hath always been the ſame, and as my Lord *Coke* upon *Littleton*, *fol.* 115. *b.* ſays, Hath no Controuler in any part of it, but the High Court of Parliament; and if it be not abrogated or alter'd by Parliament, it remains ſtill. And whereas my Lord *Coke* doth alſo in the

ſame Book, *fol.* 21. *b.* tell us, That theſe words, *in liberum maritagium*, are ſuch words of Art, and ſo neceſſarily required, as they cannot be expreſſed by words equipollent, or amounting to as much; He, for all this, brags of ſeveral Precedents where Lands were given in free Marriage with Baſtards, and yet proves not that thoſe neceſſary words *in Liberum Maritagium*, were uſed in the granting of any of thoſe Lands, or that any of thoſe perſons with whom the ſaid Lands were given were Baſtards.

[Page 3.] [3]To conclude, he tells you, That *Lhewellin* Prince of *North-Wales*, was divorced from his Wife *Joane* the Daughter of King *John;* and for this he can neither ſhew any Author or Record, but only doth dream of ſuch a thing himſelf: and yet you muſt believe him in all theſe particulars, or elſe (as you may ſee in the firſt page of his *Reply* to my *Anſwer* to his *Addenda*) he will tell you, you do withſtand the plaineſt truth of *Hiſtory* and *Reaſon* produced.

He alſo hath a fine way of *anſwering;* For if he be preſſed overmuch with any point of Law, he will tell you, *of his own authority*, that the Law in ſuch particulars hath been clearly alter'd, though he cannot tell how, or at what time it was ſo changed. If it be a Record that puts him too hard to it, then he conceives the *Roll* from whence the Deed is written, is miſtaken in ſuch and ſuch words, and *miſwrit therein from the Original Chart it ſelf.* And if out of any Hiſtory, you tell him of any thing which he cannot anſwer, then he will not ſuffer the words to be read as they ought to be printed; but he will fancy

[Page 4.] ſuch expreſſions as will beſt ſuit with his [4]turn: and will alſo diſparage the ſaid Hiſtory, although in thoſe matters he had formerly ſaid he did chiefly follow the ſame.

He doth alſo, to amuſe thoſe Readers that are of weak underſtanding, tell them of *Circumquaques*, of *bits of Law*, *pieces of Law*, brought in by the head and ſhoulders, *fragments* of Law, *parcels* of Law; and in his two laſt Books tells me of my *impertinencies*, of my being *impertinent*, and of my ſpeaking *impertinently*, (if one who ſayes he hath counted, do not miſ-

take himſelf) no leſs than Thirty times; with ſeveral other expreſſions, too ridiculous to repeat here.

He alſo, to keep up his credit with the more ſimple ſort of People, doth offer to *join iſſue with me* upon very many Points; and gives me ſome ſtrange directions to follow: which done, *he will then leave it to the World to judge, otherwiſe there will never be an end.* Whereas I will refer it to all judicious perſons, whether his Arguments in theſe two Books, be not the ſame which he uſed formerly? and whether they be not ſufficiently anſwered by me in my other [5]Books? which if ſo, the Controverſie is already at an end. [Page 5.]

Now for the manifeſtation of what I have here alledged, I ſhall deſire the judicious Reader, when Sir *Peter Leyceſter* ſpeaks of what Mr. *Glanvil* hath ſaid, to take notice what is written in the 32 page of my *Defence* of *Amicia*, and ſo on to the 43 page; as alſo what is written in the 39, 40, and 41 pages of my *Reply*.

When he ſays *Geva* is a Baſtard, then I deſire the Reader to peruſe the 43, 44, and 45 pages of my ſaid *Defence* of *Amicia*, and the 45, 46, 47, and 48 pages of my *Reply*.

When he ſays that the Gift to *Geva* was a Gift in *frank marriage*, or that the Town of *Drayton Baſſet* did paſs to the Heirs of *Geva* by vertue of that Deed which *Randle* Earl of *Cheſter* made to her; ſee my *Defence* of *Amicia*, pag. 48, 49, and 50; and the 55, 56, 57, 58, and 59 pages of my *Reply*.

When he ſays that *Joane* the Wife of *Lhewellin*, was the ſame *Joane* which King *John* had by *Agatha*, then read the 3, 4, and 5 pages of my Anſwer to his *Addenda*.

[6]When he ſays, that *Elleſmere* was given with the ſaid *Joane in Libero Maritagio;* ſee the 6 and 7 pages of my ſaid Book. [Page 6.]

When he ſays, King *John* had not three Daughters called *Joane*, or that *Joane* the Wife of *Lhewellin*, was the ſame *Joane* who was Wife to *Robert de Audeley;* Read the 16, 17, 18, 19, 20, 22, 23, and 24 pages of the ſaid *Anſwer* to his *Addenda*.

When he ſays, the ſaid *Joane* was divorced from her Husband *Lhewellin*, (which no man ever ſaid but he himſelf) then read

the 17, 18, 19, and 20 pages of the *Anſwer* to his *Addenda*, where (beſides other proofs againſt what he ſays) you will find that the Adultery of *Joane*, whil'ſt ſhe was Wife of *Lhewellin*, was committed *Anno Domini ſequenti* to that *Marriage*, which he fancies to be the Marriage of the ſaid *Joane* Wife of *Lhewellin* to the ſaid *Robert de Audeley*.

When he ſays, *Joane* the wife of *Lhewellin* was a Baſtard; then ſee the 21, and ſo on to the end of the 30 page of the ſaid Book. And although he ſays, page 50. that what I ſay concern-
[Page 7.] ing *Joane* the Wife of *Lhewellin* being [7]King *John*'s legitimate Daughter by his Wife *Hawiſe*, is ſo ridiculous, that another would be aſham'd to own it: Yet I can ſhew under the hands of perſons eminently knowing in theſe matters, what great ſatisfaction they have received in this particular, by what I have written concerning the ſame; alſo beſides thoſe proofs which I have formerly brought, he doth acknowledge that *Vaughan* in his *Britiſh Antiquities*, pag. 29. doth call her the *Daughter* of King *John:* and in a Record concerning *Budiford*, mention'd by me hereafter in this Book, ſhe is alſo called the *Siſter* of King *Henry* III, without the leaſt blemiſh of Baſtardy at all.

I might here very well make an end, but becauſe ſome perſons may be deceived with ſome of Sir *Peter*'s Flouriſhes, I ſhall (paſſing by his angry and uncivil Language, with which he doth ever abound) endeavor to clear ſome things, by which he might otherways impoſe upon ſome ſilly men.

In the firſt of his two Books in his ſecond page, he ſays, I had
[Page 8.] in the 55 pag. of my *Reply* to his *Anſwer*, ſaid, thoſe [8]Reaſons of mine (there mentioned) were unanſwerable; whereas I ſaid, *they were not at all anſwered by him; and that the one of them was ſo far from being anſwered, that it was not underſtood by him, unleſs he only pretended not to underſtand it, becauſe he perceived he could not give an anſwer to it;* ſo that it ſeems, in his opinion, to doubt whether he can anſwer an Argument, is the ſame thing as to ſay, it is unanſwerable.

In his fourth and fifth pages, he wonders if I can engliſh the words *in Libero Conjugio*, that I will not allow ſuch a Gift to be a Gift *in Frank Marriage;* and yet he doth acknowledge, that a Gift in *Connubio ſoluto ab omni ſervitio*, is not a Gift *in Free Marriage:* whereas if conſtruing might be the Rule in this Caſe, that might be made a Gift *in Free Marriage* as well as the other; for the word *Connubium*, as you may ſee in *Gouldman*'s *Dictionary*, doth only ſignifie *Lawful Wedlock* or *Marriage;* and therefore is a better word than his word *Conjugium*, which ſignifies *Unlawful*, as well as *Lawful Conjunction:* If conſtruing might alſo take place in this Caſe, a Gift *in Libero Conjugio*, or a Gift *in Libero* [9] *Connubio*, would be a Gift in *Frank Marriage* [Page 9.] at this day, as well as formerly, and all other equipollent words would alſo amount unto ſuch Gifts; whereas the Law, for the reaſon given by my Lord *Coke*, will, in this Caſe, allow of no ſuch Gift, unleſs there be uſed both the word *Liberum*, and the word *Maritagium*.

He alſo in the ſaid fourth page, doth again miſrecite that Argument of mine, which he doth there mention; for he ſays, that my Lord *Coke* ſaith, that theſe words *in Liberum Maritagium*, are ſuch words of Art, and ſo neceſſarily required, as they cannot be *underſtood* by words equipollent; whereas my Lord *Coke* ſays, *they cannot be* expreſſed *by words equipollent, or amounting to as much;* ſo hard it is to get Sir *Peter* either to repeat, or underſtand aright.

In the ſeventh page he alſo miſtakes himſelf very much, when he tells you, that Lands given *in Maritagium, Habendum ſibi & Hæredibus ſuis libere & quiete ab omni ſervitio verſus Capitalem Dominum de me & Hæredibus meis*, was a good Grant *in Free Marriage*, by the very words of *Glanvil* in thoſe ancient Ages, and was as good as *in Liberum Marita-* [10] *gium;* if he means [Page 10.] thereby that Lands might be given *in Free Marriage*, by thoſe words of *Glanvil*, in a Deed, without uſing the words *in Liberum Maritagium;* for Mr. *Glanvil* doth there only tell us what *Free Marriage* is, and it is the ſame now that it was then; but Mr.

Glanvil doth not there, or any where elſe ſay, that Lands may be given *in Free Marriage* by thoſe, or any other equipollent words, without uſing the words *in Liberum Maritagium;* and unleſs he ſays this, he ſays nothing for Sir *Peter*'s purpoſe: And this may give an Anſwer to what he hath alſo ſaid in his 14 and 54 pages of his firſt Book, and in the 26 and 27 pages of the latter of his two Books.

And whereas he doth often tell you in all his Books, that Mr. *Glanvil* ſays, that Lands may be given with any Woman *in Liberum Maritagium;* he as often tells you, that which Mr. *Glanvil* never ſaid. Indeed Mr. *Glanvil* ſays, that Lands may be given *cum qualibet Muliere,* (with any Woman whatſoever) *in Maritagium;* but when he ſpeaks of Gifts *in Free Marriage,* he
[Page 11.] ſays, they may be given *cum aliqua Muliere,* (with ſome [11]Woman) and the Law, in this particular, is ſtill the ſame; for Lands may now be given *in Maritagium,* with any Woman whatſoever; but Lands can only be given *in Free Marriage* with ſome Women, *viz.* ſuch as are of the Kindred of him who gives the Lands.

He alſo very much miſtakes (and wilfully I doubt) the Deed made in the time of King *John,* where he ſays, *Saher de Quency* Earl of *Wincheſter,* granted to *Robert* his Son and Heir, certain Mannors *ad dandum in Liberum Dotarium* Hawiſiæ *Sorori Comitis* Ceſtriæ, *Uxori ejuſdem* Roberti, which Deed I ſhall here give you at large, as I find it in the 133 page of his *Hiſtorical Antiquities.*

SAherus de Quency *Comes* Wintoniæ, *omnibus Hominibus & Amicis ſuis, præſentibus & futuris, ſalutem. Sciatis, me conceſſiſſe & dediſſe & præſenti Chartâ meâ confirmâſſe* Roberto de Quency *Filio meo & Hæredi ad dandum in liberum Donarium* Hawiſiæ *Sorori Comitis* Ceſtriæ, *Uxori ejuſdem* Roberti, Bucehebeiam, & Granteſſet, & Bradeham, & Herdewich, *cum omnibus*
[Page 12.] *earundem terrarum pertinentiis, pro centum Libratis* [12]*terræ: Et ſi hæ prædictæ terræ non valeant per Annum centum Libras, Ego in aliis terris meis de propriâ Hæreditate meâ in* Anglia, *ei tantum*

perficiam, quòd plenariè habeat centum Libratas terræ per viſum & conſiderationem legalium Militum hominum videlicet, Comitis Ceſtriæ, *& meorum. Et præterea Dedi eidem* Roberto *Feoda duorum Militum, ſcilicet, Feodum* Matthei Turpin *in* Winterſlawa *in* Wilteſhire, *pro ſervitio Feodi unius Militis, ad dandum ſimul cùm terris nominatis prædictæ* Hawiſiæ *Uxori ſuæ in liberum Donarium. Teſtibus his, Comite* Davide, Willielmo *Comite de* Ferrars, Philippo de Orreby, Roberto de Baſingham, Ricardo de Lindeſcia, Willielmo de Grumpington, Henrico de Braibroc, Willielmo de Syelford, David Giffard, Willielmo Picot, Hugone & Thoma & Henrico Diſpenſariis, Waltero de Coventrey, Waltero Daivilla, *& multis aliis.*

And now as you may ſee in the 29 page of his ſecond Book, he ſays, That in his *Hiſtorical Antiquities*, the word *Donarium* was there miſprinted for the word *Dotarium;* whereas the word *Dotarium* is not in the ſaid Copy which he [13]Cites, as a knowing [Page 13.] Friend of mine doth inform me, who, at my requeſt, did very lately and carefully examine the ſame in one of the *Couchir Books* in the *Dutchy Office* in *Grayes-Inn;* but the word is *Donarium*, which probably the Tranſcriber did miſtake for *Douarium*, the *u* and *n* being anciently written alike, and the *v* conſonant not then uſed. But if the word had been *Dotarium* it would not ſigniſie *Marriage*, as he doth fancy, although *Dos* in *Domeſday Book* be called *Maritagium;* for *Dos* is twofold, and that *Dos* which is *Dotarium*, is the ſame with *Douarium*, which we in Engliſh call *Dower*, and is not that *Dos* which ſometimes is called *Maritagium:* For this ſee *Glanvil*, lib. 6. cap. 1. whoſe words are theſe, *Dos duobus modis dicitur, dos enim dicitur vulgaritèr*, id quod aliquis liber homo dat ſponſæ ſuæ ad oſtium Eccleſiæ tempore deſponſationis ſuæ, *&c.* And lib. 7. cap. 1. *In alia enim acceptione, accipitur dos* ſecundum leges Romanas (which three laſt words, with ſome others, he leaves out in the eighth page of the firſt of his two laſt Books) *ſecundum quas proprie appellatur dos, id quod cum muliere datur viro, quod* [14]*vulgariter* [Page 14.]

dicitur Maritagium; Now that *Dotarium*, is that *Dos* which is *Dower*, and not that *Dos* which is called *Maritagium*, you may ſee in Sir *Henry Spelman*'s *Gloſſary* Printed at *London* 1664. p. 174. whoſe words are theſe:

¶ *De eo Dotis genere, quod uxoribus conſtituunt Angli.*

¶ *Doarium, Dodarium, Dotarium, Douarium, Dotalitium.*] Omnia recte interpretatur vernaculum noſtrum **Douer,** non Latinum dos. Eſt enim propriè *dos*, illud quod maritus accipit cum uxore: hæc verò id quod in remunerationem dotis, reportat uxor. And Sir *Peter* very well knows, that what is given in the aforeſaid Deed, was only given as a *Dower* or *Joynture*, and not as a Gift *in Free Marriage*, as you may ſee in the 132 page of his *Hiſtorical Antiquities*, where he thus writes:

HAwiſe, *fourth Daughter of Earl* Hugh *by* Bertred, *married* Robert Quency *Son and Heir of* Saher *de* Quency *Earl of* Wincheſter. *She had the Earldom of* Lincoln, *to wit, the Caſtle and* [15] *Honour of* Bolingbroke, *and all the Lands of Earl* Randle *in* Lindſey *and* Holland *in* Lincolnſhire, *for which ſhe* gave 50l. *for relief. On* Hawiſe *was eſtated for* *Joynture, Bukby, Granteſſet, Bradeham, *and* Herdwick, *as appears by this Deed in the* Couchir *Book of the* Dutchy Office, *Tom.* 2. Honor *ſive* Soca *de Bolingbroke*, num. 26. pag. 508.

[Page 15.]

* Note.

After which, he immediately doth *verbatim* recite the aforeſaid Deed; let the Reader therefore judge of the integrity of Sir *Peter*, who in his new Book pretends, that the aforeſaid Lands were given *in Free Marriage* to the Lady *Hawiſe;* and yet in his *Hiſtorical Antiquities*, doth acknowledge that they were eſtated for *Joynture* only, as by his words before mentioned doth clearly appear.

And whereas he ſays, pag. 9. that it is not abſolutely true which my Lord *Coke* doth ſay, *viz.* That *at this day, the words* in

Liberum Maritagium, *have no other words equipollent; for then a Deed in Engliſh granting Lands* in Free Marriage, *or a Deed in French de terres* en Frank Marriage *would be void grants; for nei-*[16] *ther of theſe have in ſtrict terms the words* in Liberum Ma- [Page 16.] ritagium, *&c. wherefore certainly he underſtood it of a Grant in Latine:* His arguing therein is very weak; for the Engliſh words *in Free Marriage,* and the French words *en Frank Marriage,* are the ſame words in Law, with the Latin words *in Liberum Maritagium,* though in different Languages; but the words *in Libero Conjugio,* though capable of the ſame conſtruction in Engliſh with the words *in Libero Maritagio,* are but equipollent to them, and ſo the words, *in Wedlock free from all Services,* are but equipollent to the Engliſh words *in Free Marriage;* and the French words, *en Nopſage acquite de Services,* are but equipollent to the French words, *En Frank Marriage.*

Alſo by this Rule, a gift of Lands, by a Latin Deed *in Libero Maritagio,* would be void, becauſe they are not in ſtrict terms the words *in Liberum Maritagium;* ſo that the Reader may ſee what ſtrange kind of Arguments Sir *Peter* doth uſe.

In the 17 page, he tells me, that in the fourth and fifth pages of my *Anſwer* to his *Addenda, I further prove, by comparing* [17] *the* [Page 17.] *age of* Bertred, *that* Agatha *could not be Daughter to the ſecond* William de Ferrars *by* Agnes *his Wife;* whereas he is pitifully miſtaken, for I did go about no ſuch thing, but did in the 3, 4, and 5 pages ſhew, that *Joane,* who was the wife of *Lhewellyn,* could not be the ſame *Joane* which King *John* had by the ſaid *Agatha,* and that was all which I did there prove.

In the 18 and 19 pages he ſays, that though the Writ (meaning King *John*'s Precept to the Sheriff of *Shropſhire,* to make Livery of *Elleſmere* to *Lhewellin* after his Marriage with *Joane* the daughter of King *John*) if you begin the year of our Lord the 25*th* day of *March,* was in the year 1204. yet it would fall out to be in the year 1205, if with ancient Hiſtorians we begin the year on the firſt day of *January;* but it would be a pretty Trick, if from either of theſe reckonings, he could make out

what he ſaid in the ſecond page of his *Addenda, viz.* that the Marriage of the ſaid *Lhewellin* with the ſaid *Joane*, was in the year 1206.

In his 20 and 21 pages, he thinks he gives me no quarter; for
[Page 18.] he tells me, [18]that *I would diſtinguiſh between* Maritagium, *and* liberum maritagium, *and ſay*, maritagium *is twofold, but I do not give the members of my diſtinction aright; for a good Logician* (Sir *Peter* is the man meant without all doubt) *would tell me, that the members of a good diſtinction muſt be oppoſite, and not as I diſtinguiſh*, Maritagium eſt duplex, vel maritagium, vel liberum maritagium; *The members are here coincident, for* Liberum maritagium eſt maritagium: Glanvils *diſtinction is good*, Maritagium eſt vel liberum vel ſervitio obnoxium: *ſo that* Maritagium *the* genus *comprehends the members, and both oppoſite one to another, as either free marriage, or not free marriage.* This is Sir *Peter*'s charge, and a very great one, as he believes: But for anſwer hereunto, I doubt not but the Reader hath taken notice how in my *Reply*, p. 39. & 40. I did obſerve that *Maritagium* was twofold, and that it was diſtinguiſhed into *Maritagium liberum*, and *Maritagium ſervitio obnoxium:* ſo that when I did intend to take notice how it was diſtinguiſhed, Sir *Peter* cannot but acknowledge that I did right; the only colour of Cavil that he hath, is, becauſe
[Page 19.] I afterwards ſay, that [19]whenſoever any Lands are given in a Deed *in maritagio* only, it is always the ſame thing in Law, as if they were given *in maritagium ſervitio obnoxium*, and it is only his want of underſtanding that cauſeth him to blame me for what I ſo ſay, for that expreſſion will not thwart with what I ſaid before; this will appear, becauſe that *maritagium ſervitio obnoxium*, is the elder Brother to *maritagium liberum;* for when Lands are given *in maritagio ſervitio obnoxio*, ſuch Gifts are agreeable to the Common Law of *England;* but when they are given *in liberum maritagium*, as you may ſee *Coke* upon *Littleton*, fol. 21. b. they *create an eſtate of inheritance againſt the general Rule of the Law;* and therefore though this younger Son be connived at, and tollerated, yet, as you may there ſee, *the Law requireth* that ſuch

Gifts be *legally purſued*, and that is the reaſon why ſuch Gifts cannot be made to any but to thoſe of the Blood, as alſo why the words *in liberum maritagium*, are ſuch words of Art, and ſo neceſſarily required, as that they cannot be expreſſed by words equipollent, or amounting to as much: Now the Common Law-
yers (as you [20]may ſee *Coke* upon *Littleton*, fol. 189. a.) have a [Page 20.]
Rule, that *Additio probat minoritatem;* and thereupon it is that my Lord *Coke* there tells you, that the younger Son giveth the difference; and purſuant to this Rule, when a Gift is made *in maritagio*, which is intended to be liable to ſervices, (that being the elder Brother) they uſe the word *maritagio* in the Deed, and no more; but when it is given *in free Marriage*, (which is the younger Brother) according as my Lord *Coke* tells you, the word *liberum* (which is the difference) is abſolutely neceſſary: And herewith agrees the common practice; for I never ſaw in all my life, where Lands were given *in maritagio*, liable to ſervices, that the words *in maritagio ſervitio obnoxio*, were uſed in any of the ſaid Deeds, but only the words *in maritagio;* and if they did intend that any other ſervices ſhould be done, over and above thoſe ſervices which the Law did create by the words *in maritagio*, then they did afterwards in the ſaid Deeds, mention thoſe other ſervices, but elſe not.

Alſo the word *Fœdum*, or *Fee*, is twofold, *viz. Fœdum ſimplex*, and *Fœdum* [21]*tale*, and yet in this Caſe, like unto the other, [Page 21.]
Fee-ſimple being the elder Brother to *Fee-tayle*, (all Inheritances being in *Fee-ſimple* before the Statute of *Weſtminſter* 2. cap. 1. as *Littleton* tells you, *lib.* 1. *cap.* 2. *ſect.* 13.) if it be ſaid in any Book, that a Man is ſeized in *Fee*, without more ſaying, it ſhall be intended in *Fee-ſimple;* for it ſhall not be intended by this word (*in Fee*) that a man is ſeized in *Fee-tayle*, unleſs there be added to it this addition *Fee-tayle*, as you may ſee in *Littleton*, lib. 3. cap. 4. ſect. 293. And according to this Rule, our Common Lawyers do all of them conſtantly uſe the like expreſſions at this day; ſo that there is no more reaſon for him to tell me, that I do not diſtinguiſh aright in this Caſe of *Maritagium*, than

there is to tell them, that they do not diſtinguiſh aright as to the word *Fœdum*, the word *Fœdum* being as much the *Genus* to *Fee-ſimple* and *Fee-tayle*, as the word *Maritagium* is the *Genus* to *Marriage liable to ſervices*, and to *Frank Marriage*.

But would any one think, if I had committed ſo great an Error herein, (as he would perſuade the World I had done) that
[Page 22.] Sir *Peter* himſelf, within a [22]very few lines, and in the ſame 21 page, ſhould really be guilty of the like offence, which he did unjuſtly charge me withall; and yet you ſhall ſee that it is ſo, for both in his 21 page, and 55 page, he tells you, that *Maritagio* was often in thoſe Ages, (*viz.* of Mr. *Glanvil*) underſtood for *libero maritagio*, both by Hiſtorians and old Deeds; you ſhall therefore ſee how Sir *Peter*'s own argument in his 20 and 21 pages, may, *mutatis mutandis*, be thus retorted upon himſelf, *viz.* Here Sir *Peter* would diſtinguiſh between *Maritagium*, and *Maritagium ſervitio obnoxium*, and ſay, *Maritagium* is *twofold*, but doth not give the Members of his Diſtinction aright; for a good Logician would tell Sir *Peter*, that the Members of a good Diſtinction muſt be oppoſite, and not as he doth here diſtinguiſh, *Maritagium eſt duplex, vel maritagium, vel maritagium ſervitio obnoxium;* the Members are here coincident, for *Maritagium ſervitio obnoxium eſt maritagium: Glanvil*'s Diſtinction is good; *Maritagium* eſt vel *liberum* vel *ſervito obnoxium:* ſo that *Maritagium* the *Genus*, comprehends the Members, and both oppoſite
[Page 23.] one to another, as, ei-[23]ther *free marriage*, or not *free marriage;* let Sir *Peter* therefore anſwer this his own Argument as he thinks fit.

As to what he pretends in the 22, 23, and 24 pages, I did not ſay that the Gift of *Elleſmere* to *Lhewellin*, was but an Eſtate for Life, it being ſaid in the Precept, to make Livery to be an Eſtate *in maritagio*, (though not *in libero maritagio*) and to make Livery thereof would have been needleſs, if it had been a Gift in *free marriage;* Neither is *Joane* his Wife proved to be a Baſtard, ſo that that Precedent is out of doors; but I did give ſome Reaſons why that Precedent would have ſtood him in no

ſtead, if ſhe had been a Baſtard, and that a Gift in *free marriage;* and could yet ſay more in that particular, if occaſion did require: but that not being the Caſe, I will forbear to ſay any more concerning the ſame.

In his 24 page, and ſo on to the 42, (beſides ſome miſtakes of his, which, becauſe they are not material to the point, I will not here take notice of) he ſpends a great deal of time in proving, that *Hellen* the Wife of *John Scot*, was the Daughter of *Lhewellin*, by his Wife [24]*Joane* daughter of King *John;* whereas [Page 24.] he did clearly prove the ſame, in his 28 and 29 pages, in very few words: and the ſame doth alſo appear by a Record hereafter mentioned, which very lately came to my knowledge; but yet for all that, this Precedent will do him no good, as well becauſe the ſaid *Joane* is not proved to be a Baſtard, as alſo becauſe *Budeford* and *Suttehale* were not given to the ſaid *Lhewellin in libero maritagio*, as will anon appear; Sir *Peter* doth indeed tell us, that thoſe Mannors were given *in libero maritagio* to the ſaid *Lhewellin*, but the Deed lately belonging to *Somerfield Oldfeld* Eſq; doth prove no ſuch thing, but doth only prove that the ſaid *Lhewellin* did miſtake himſelf, and think that they were given him *in free marriage*, when they were not ſo given; I therefore believing Sir *Peter*, that thoſe Mannors were given *in free marriage* to *Lhewellin*, when they were not; and perceiving *Lhewellin* to ſay that King *John* had given them to him, but not telling with whom, and knowing (as appears in the 13, 14, 15, and 16 pages of my *Anſwer* to his *Addenda*) if they were given to him *in frank mar-*[25]*riage* with his Wife *Joane* the [Page 25.] Daughter of the ſaid King, that the ſaid *Lhewellin* had not power to diſpoſe of them from his Son *David*, (who was his right Heir) could not find out any other way to reconcile every thing in this particular, but by ſuppoſing that *Lhewellin* had a former Wife who was a Kinſwoman to King *John*, with whom thoſe Lands were given, and by whom he had his Daughter *Hellen:* And what I ſaid was by way of conſequence, for I relied only

upon my fourth Argument, as appears in the ſaid 13 page, and brought the other three but as concurrent; And what I there believed might very well have been true, for Sir *Peter* proves that *Lhewellin* had a former Wife; and if his words had been true in ſaying that thoſe Mannors were given to the ſaid *Lhewellin* with the ſaid *Joane in libero maritagio*, my words muſt neceſſarily have been true alſo; for I was only miſtaken in *Hellens* Mother, by building upon that unſound foundation which Sir *Peter* did there lay.

But mark what work Sir *Peter* doth make of it, now he hath
[Page 26.] proved *Hellen* to be *Lhewellin*'s Daughter by his ſaid [26]Wife *Joane;* for he in his 37 page grants all my Quotations, (I would I had cauſe to ſay the like by him) and alſo grants what by thoſe Lawyers is ſaid in the 14 and 15 pages of my *Anſwer* to his *Addenda*, which is a certain ſign he doth not underſtand what they do ſay; for by what is there ſaid, it appears, that if a Man have Land given him *in free marriage* with a Wife, he hath only *cuſtodiam cum uxore*, and hath not ſo much as an Eſtate for his own life, until he be Tenant by the courteſie of *England*, and by conſequence he cannot diſpoſe of thoſe Lands to any perſon whatſoever from the next Heir; And this ignorance of his runs him upon his miſtake in the 36 and 37 pages of his latter Book, wherein he ſays, that a man would have but *cuſtodiam cum uxore*, although the Wife *were not of the blood of the Donor:* whereas you may ſee in the 14 and 15 pages of my *Anſwer* to his *Addenda*, that though when Lands be given with a Woman to a Man *in frank marriage*, it is *liberum tenementum uxoris, & non viri, cum non habeat niſi cuſtodiam cum uxore*, yet it is *(ſecus)*
[Page 27.] otherways, when the Land is given in marriage, *pro homagio* [27] *& ſervitio viri*, and one reaſon of this difference betwixt Land given *in marriage*, for which no ſervice is to be done, and Land given *in marriage*, for which *Homage* is to be done, is becauſe in the one Caſe, the Land may *revert* to the *Donor*, but in the other Caſe, the Land can never *revert*, as you may find in *Glanvil*,

lib. 7. cap. 18. who, after he hath told you what *free marriage* is, hath theſe words: *Cum quis itaque terram aliquam cum uxore ſua in maritagium ceperit, ſi ex eadem uxore ſua hæredem habuerit filium, vel filiam clamantem & auditum infra quatuor parietes ſi idem vir uxorem ſuam ſupervixerit, ſive vixerit hæres ſive non, illi in vita ſua remanet maritagium illud, poſt mortem vero ipſius ad donatorem vel ejus hæredes eſt reverſurum. Sin autem ex uxore ſua nunquam habuerit hæredem, tunc ſtatim poſt mortem uxoris ad donatorem vel hæredes ejus revertetur maritagium. Et hæc eſt quædam cauſa quare de maritagio tali non ſolet recipi homagium. Si enim ſic donata eſſet terra aliqua in maritagium vel alio modo quod inde reciperetur homagium tunc nunquam de cetero ad donatorem vel ejus hæredes licite poſſit reverti ut ſupradictum eſt.* Sir [28]*Peter* therefore muſt either confeſs that *Lhewellin* had no power to diſpoſe of thoſe Lands in ſuch manner as he did, and then that Precedent will be of no more force, (if the ſaid *Joane* had been a Baſtard) than a Precedent would be of a Man who now ſhould give Lands *in libero maritagio*, to one who is not of the blood, or elſe he muſt acknowledge that thoſe Lands were given to *Lhewellin* but *in maritagio*, and ſo he being liable to do *homage* for them, might diſpoſe of them as he did pleaſe; And that they were given to him but *in maritagio*, will appear, as well by the making of Livery of them (which is needleſs in a Gift *in frank marriage*) as alſo by theſe following Records. [Page 28.]

Clauſ. 2. H. 3. M. 1.

M*Andatum eſt Vic: Warr: quod plenam ſeiſinam habere faciat* Leolino *Principi Norwall: de Villa de* Budiford *cum pertinentiis ſuis quam Dominus* Johannes *Rex Pater Domini* Henrici *Regis dedit ei* in Maritagium *cum* Johanna *Sorore* Henrici *Regis uxore ipſius* Leulini. *Teſt. * Comite apud* Weſtm. 10. *Oct.*

* Scilicet *Willielmo Mareſcallo* Comite *Pembrochiæ* tunc Rectore Regis & Regni.

[Page 29.] [29]*Rot. Pip. de ann.* 2. *H.* 3. *Warr. & Leic.*

WIllielmus *de* Cantilupo Philippus *de* Kinton *pro eo reddit comp. de* cxxvii. li. ii. s. bl. *de firma de* Warewick: *& de quater viginti & quinque libris* xvi. s. iiii. d. bl. *de firma de* Leiceſtreſhire.

——— *Et* Leuelino *Principi Norwall:* lxxvi s. *in* Budiford *in* maritagio *cum* Johanna *uxore ſua, de dimidio anno* per Breve Regis.

But the Deed to *John Scot* Earl of *Cheſter*, might be either *in libero maritagio*, according to the agreement of *Lhewellin* with *Randle* Earl of *Cheſter*, or elſe it might be *in maritagio* only, as it was given to the ſaid *Lhewellin;* ſo that be that Deed how it will, it will work nothing in the Caſe.

In his 57, 58, and 59 pages, he ſeems much diſpleaſed with what I tell him in the 33 page of my *Anſwer* to his *Addenda*, concerning his partiality, and doth in ſome reſpects ſtrain my words further than he ſhould; But though I will not ſay any
[Page 30.] thing at this time con-[30]cerning this particular, for ſome reaſons I have formerly told him of, yet if he doth pleaſe to ſpeak of it to me at any time, when any judicious perſon is preſent, I think I can make good what I ſaid, and that he will not be excuſed by that contradiction of his, when he ſays, page 58 and 59, that *Admit he were partial never ſo much, in what I charge him with, yet he hopes what he hath written, I find it impartial to all, ſo far as he goes, or doth know.*

In his 60 and 61 pages, he tells me, that I go to excuſe an Error of mine, in calling *Ralph Mainwaring Chief* Juſtice of *Cheſter*, becauſe I found in his *Hiſtorical Antiquities*, page 160, and alſo in other places, there were in the time of *Hugh Cyveliok*, ſometimes two Juſtices of *Cheſter*, and ſometimes but one; But I did not abſolutly ſay, there were two Juſtices living both together in the time of the ſaid *Ralph;* I only did inſinuate, as you may ſee, in the 5 page of my *Reply*, and the 34 page of my

Anſwer to his *Addenda*, that it was poſſible there might be more than one at a time, becauſe when Earl *Hugh* was living I found ſome Deeds, directed *Juſticiariis*, and [31] I am ſure the reaſons which he gives to the contrary in the 61 page of the firſt of his laſt two Books are very ſtrange ones; for he ſays that it is there to be underſtood of the Judges, &c. *ſucceſſively or with their Deputies under them;* Now how can any Deed be directed to any Juſtice and his *Succeſſor*, before he hath a ſucceſſor? or to their Deputies under them, if what he ſays in the ſame page be true, that *then they executed their places themſelves, no power being given to them in thoſe ages to make or conſtitute a Deputy (by Commiſſion) at pleaſure, as we have now, and in theſe latter ages hath been uſually done?* Neither doth he mend it afterwards, for he ſays, *poſſiby upon an emergent occaſion, the Antient Earls might conſtitute another Judge for the preſent in the abſence of the other, to execute the place for a time, and ſo change them as oft as was thought good:* Now if this conceit of his be true, that another Judge was conſtituted for a time, only in the abſence of the former, were there not then two Juſtices at one time? ſo that here are three very weak Anſwers given thereto; But I ſhall now make it further appear, that there was ſometimes a *Chief* [32] *Juſtice* of *Cheſter* in thoſe elder Ages, which I will thus prove. [Page 31.] [Page 32.]

That the word *Juſtitia* (which then is of the Maſculine Gender according to that Rule, *Maſcula nomina in* a *dicuntur multa virorum*) was ſometimes in thoſe elder Ages uſed for the *Judge* or *Juſtice* of *Cheſter*, I believe he cannot deny, becauſe in his *Hiſtorical Antiquities*, page 144, I find a Deed thus directed; Ranulphus *Comes Ceſtriæ, Conſtabulario ſuo, & Dapifero*, Juſtitiæ, *& Vicecomiti Baronibus & Ballivis ſuis, ſalutem.* I alſo in the 143 page of the ſaid Book, find this Deed following:

RAnulphus *Dux* Brittanniæ, *&* *Comes* Ceſtriæ *&* Richmondiæ, *Omnibus tam præſentibus quam futuris qui Chartam iſtam viderint & audierint, Salutem. Sciatis quod ego dedi & conceſſi* Andreæ *Filio* Mabiliæ, *&* *Hæredibus ſuis, ut ſint liberi & quieti*

de me & meis Hæredibus de Teloneo *per totam terram meam, & in aqua, & in terra, & in Civitate* Ceſtriæ, *& extra, & a Brevibus portandis, & a Priſonibus capiendis & cuſtodienis, & a Namis capiendis, & a Vigiliis faciendis nocte vel die, & a cæteris hujuſ-*
[Page 33.] *modi con-*[33] *ſuetudinibus & exactionibus, nec de querelâ aliquâ in*
* Note. *Civitate* Ceſtriæ, *vel extra, reſpondeant in præſentiâ meâ,* vel ſummi Juſtitiæ mei: *Et ſuper forisfacturam meam* x Librarum *prohibeo, ne aliquis eos de ſupradictis libertatibus impediat vel inquietet, ſed eas libere & quiete teneant, Reddendo mihi & Hæredibus meis annuatim* vi *Denarios ad Feſtum Sancti* Michaelis. *Hiis Teſtibus,* Bertre *Comitiſſa* Ceſtriæ, Radulfo *de* Meinewarin, Radulfo *Seneſchallo,* Hugone *de* Boidele, *&* Alano *fratre ejus,* Roaldo, Roberto *cam.* Roberto Saraceno, Ranulfo Dubeldai, Nicolao *filio* Roberti, Thoma *fratre ſuo,* Willielmo Marmiun, Ricardo Poibel, Rogero *Clerico, & multis aliis. Apud* Ceſtriam.

And now let any perſon judge whether thoſe words *in præſentia mea, vel* Summi Juſtitiæ *mei,* do not clearly prove, that there was a *Chief Juſtice* of *Cheſter* in thoſe elder Ages; for that Deed was made in the time of the ſaid *Ralph Mainwaring,* he being a witneſs to the ſame. And as I have proved in the fifth page of my *Reply,* that if there were then two *Juſtices,* the ſaid
[Page 34.] *Ralph* was the [34] Chief; ſo it will alſo eaſily appear, that the ſaid Deed was made when the ſaid *Ralph* was Judge; for you may find in Sir *Peter*'s *Hiſtorical Antiquities,* pag. 143, & 144. that *Randle* Earl of *Cheſter* did firſt write himſelf Duke of *Britain* in the year 1187, and did relinquiſh that Title in the year 1200. And you may ſee in the 172 page of the ſaid Book, that *Philip* de *Orreby* (who immediately ſucceeded the ſaid *Ralph*) was not made Judge till about the year 1209.

In the 62 and 63 pages, he thinks that he hath at laſt found out a fine device to cure what he formerly ſaid; for whereas I told him (page 9. of my *Reply*) that I could not imagine how it was poſſible that the ſaid *Geffrey* de *Dutton,* to that, or any other

Deeds of his own, could have his name either with the word *Domino*, or without, either five times for once, or at all, amongſt the Witneſſes ſubſcribed, unleſs he did fancy that he was a Witneſs to his own Deeds: He now pretends, that when he ſaid *he had ſeen ſeveral other Deeds of the ſame perſon*, he meant and underſtood, *ſeveral other Deeds touching the ſame perſon: for the word* (of) *is uſed many times for* concerning, *as*, of or con-[35]cerning the ſame perſon, *&c.* which Anſwer of his doth not at all make the matter better than it was before; for, as Men do not uſe to be Witneſſes to their own Deeds, ſo they did not uſe (and eſpecially in thoſe ages when the Deeds were ſo ſhort) to be Witneſſes to Deeds which concerned themſelves; And though he may poſſibly ſhew me a Deed made concerning a *Geffrey* de *Dutton*, to which a *Geffrey* de *Dutton* was a Witneſs, becauſe there were ſeveral *Geffreys* de *Dutton* living at that time; yet he muſt excuſe me, if I do not believe that he can ſhew me either ſeveral Deeds, or any one Deed in that age which doth concern a *Geffrey* de *Dutton*, to which that *Geffrey* de *Dutton* was a Witneſs, who was the Party concerned. [Page 35.]

In his 64 page he ſays, what he ſaid in his *Addenda*, p. 11. is not contrary to what he did write in the bottom of the fifth page of his *Anſwer* to the *Defence* of *Amicia*. Let the Reader therefore ſee how Sir *Peter* ſays in the 11 page of his *Addenda*, that, *Geffrey Dutton* was no Knight; *For otherways he would have called himſelf by his Title, as*, Ego Galfridus [36]de Dutton Miles, *or*, Ego *Dominus Galfridus de Dutton dedi, *&c. which few Men will omit in their own Deeds, if they have really the honour of Knighthood.* And let him alſo obſerve, how at the bottom of the fifth page of his ſaid *Anſwer*, ſpeaking of the word *Domino*, he ſays, *that word is* never *uſed in old Deeds by the party himſelf, but where it is *joined with another word, as*, Ego Willielmus Manwaring Dominus de Peover; and then let him judge whether thoſe expreſſions be contrary to each other, or not. [Page 36.] * Note. * Note.

In his 65 page he ſays, that I would fain palliate another groſs

miſtake, in making *Geffrey de Dutton* the Father, to live on to be a Witneſs to the Deed of *Geffrey de Dutton* to his Daughter *Margaret* of the Mannor of *Nether Tabley;* but if the Reader pleaſe to ſee the 36, 37, 38, and 39 pages of my *Anſwer* to his *Addenda*, it will there appear to be very uncertain, whether it was any miſtake at all: And he himſelf after he hath ſaid all he can, doth confeſs in the 67 page of the firſt of his ſaid two Books,

[Page 37.] that his Deeds do but *probably* [37] demonſtrate, that *Geffrey Dutton* the Father was dead before; ſee therefore what a ſtir he keeps about nothing, for it is not material whether this be a miſtake or not. And whereas he pretends page 68, that it is *petitio principii* to ſay, that the word *Dominus* doth always ſhew, that the perſon to whoſe name it is applied, was a Knight, or Clergyman; yet I have ſhewed that it is uſually applied to ſuch perſons, which is the only proof that can be had in this Caſe; and it lies upon him to prove, if he will contradict me therein, that it was ſo applied to ſome one, who was neither Knight nor Clergyman; for of the higher Nobility I do not ſpeak, to which kind of perſons the word *Dominus*, either as it ſignifies *Lord* or *Sir*, might ſometimes be applied: And though he ſays that thoſe very worthy perſons Mr. *Wood* and Mr. *Blunt*, are of opinion that the word *Domino* was ſometimes alſo prefixed in thoſe elder ages to the names of perſons of better ſort and quality, though no Knights, as well as to Knights and Clergymen, contrary to the opinion of ſome other skilful men, (as learned perſons do ſometimes differ from each

[Page 38.] other;) [38] yet he doth not inſtance in any one example to make good what he ſays, and it will be a very hard matter ſo to do; for the proving that the word *Dominus* hath been prefixed to a perſons name, and ſometimes afterwards omitted, will not be ſufficient, becauſe I can prove that ſome who were certainly *Knights*, have been afterwards named without having the word *Dominus* prefixed, or the word *Miles* added to their names.

In the 39 page of my *Anſwer* to his *Addenda*, I told him of ſome words, which he pretended to have written, which I could not find in his Book; and for this in the 69 page of the firſt of

his two Books, he ſays I would beſpatter him with a falſity therein, although in the 70 page, he confeſſes thoſe words were not in his *Anſwer* expreſly, *&c.* and that it was a negligent error; and yet for all this, in the 64 and 65 pages of the firſt of his new Books, he pretends that the words *Ego Dominus* A. B. *dedi,* &c. (which were ſome of the words I could not find in his ſaid Book) were ſpoken of before, in the *7th* page of his Book there mentioned, ſo that he commits the ſame Error again.

[39] In the 68 page, he again takes notice how I had formerly ſaid, that *Margaret* was the Daughter and Heir of *Geffrey Dutton,* whereas he ſays ſhe was his Daughter, but not Heir, and this he calls a groſs miſtake of mine; but a groſs miſtake it cannot be, becauſe the ſaid *Margaret* and her Heirs did enjoy ſeveral Mannors which were her Fathers, and becauſe it is not material to the point in hand, whether ſhe was or was not his Daughter and Heir. And whereas he is diſpleaſed at me for ſaying, *if it was any miſtake at all,* he muſt thank himſelf for that; for ſince he did ſo untruly quote the Book of *Barlings,* and ſo many other places, he muſt excuſe me, if I dare not rely too much upon his bare word. [Page 39.]

In his 67 page, he doth *confeſs he calls one, Sir* Geffrey Dutton *of* Chedil *in his Book: but he calls him not Sir* Geffrey Dutton *of* Chedil *Knight, as I alledge;* whereas I cannot imagine what he ſhould be but Sir *Geffrey Dutton* of *Chedil* Knight, being he was no Clergyman, unleſs he would have him to be Sir *Geffrey Dutton* Eſq; or Sir *Geffrey Dutton* Gentleman. And though he pretends, [40]page 73. *that Eſquires were none in thoſe ages,* I ſhall refer the Reader for that to Mr. *Selden*'s *Titles of Honour,* pag. 830, 831, *&c.* Though I confeſs the word *Eſquire* doth not often occur as a legal Addition, till after the Statute of Additions made in the firſt year of King *Henry* V. [Page 40.]

From the end of the 73 page, to the end of the 84, inſtead of producing an Example where the word *Dominus* was applied to the name of a Layman, who was but an Eſquire or Gentleman, (which was the thing which he ought to have done) he vainly

ſpends his time in acquainting you with ſome Notes of his, in Manuſcript, never yet printed, on the ſeveral Notions of the word *Dominus*, and the Engliſh word *Sir;* but as he hath there omitted ſome things to which thoſe words were uſed to be applied, ſo he went too far, when in his 77 and 79 pages, he applied to the Lady *Hawiſe de Quency* the word *Dominus*, and the word *Sir*.

In his 86 page, and ſo on, to almoſt the end of the 89, he would fain perſuade the Reader, that *Hugh Cyveliok* was not
[Page 41.] One and twenty years of age [41] when he joined with his Mother *Maude* in giving *Stivinghale* to *Walter Durdent* Biſhop of *Cheſter*, and his Succeſſors, to which Deed *Euſtace* the Conſtable was a Witneſs, and tells you of a Precedent in his Book of *Antiquities*, pag. 114. & 115. where you may find *Richard* Earl of *Cheſter joining with* Ermentrude *his Mother in the Grant of* Wudemundeſlai *to the Abby and Church of* Abington *in Barkſhire, Anno* 6. Henrici 1. *Anno Domini* 1106. *whiles he was ſcarce* 12 *years old, whereof the Book of* Abington *immediately before the Deed, ſaith thus*, fol. 47. *Ipſe Comes benefactum extulit, & ſuo deſcripto roboravit: quod deſcriptum Sigillo quidem matris Signari conſtitit: nondum enim militari Baltheo cinctus, materno Sigillo literæ quælibet ab eo directæ includebantur, hac de re, quod eò annotatur, Comitiſſæ potiùs quam Comitis Sigillo ſignatur.* But he doth not give you the Deed in either of his two little Books, therefore I think fit to Tranſcribe it here, for the ſatisfaction of thoſe who have not ſeen the ſame, as I find it in his *Hiſtorical Antiquities*, pag. 114. but miſprinted 122.

[Page 42.] [42] RIcardus *Ceſtrenſis Comes, & Ermentrudis Comitiſſa mater ejus, Nigello de Oilli, & Rogero filio Radulfi, & omnibus Baronibus de Oxenford Scira, Salutem & Amicitiam.* Sciatis *quia pro amore Dei & anima Patris mei, & remiſſione noſtrorum Peccatorum, Concedimus hidam illam, quam Droco de Andeleiâ dedit Eccleſiæ Abbendonenſi, quæ eſt in loco qui dicitur* Wudemundeſlai: *Nos eidem Eccleſiæ concedimus & auctorizamus perpetuò*

habendam, ſolidam & quietam ab omni noſtro ſervitio: Et Rogerus filius Radulfi & Succeſſores ejus ſint quieti in noſtro ſervitio, quantam ad illam hidam pertinet: Et defendimus, ut nullo modo Rogerus, vel alius per eum, inquietat habitantes in terra illa: Hoc autem fecimus & teſtimonio noſtrorum Baronum; ſcilicet Willielmi filii Nigelli, & Hugonis filii Normanni, & Ricardi Balaſte, & Willielmi filii Auskitilli, & Ricardi filii Nigelli, & Domini Goisfridi Capellani & aliorum. Hoc actum eſt in ſexto Anno Regni Henrici Regis, in menſe Maii, in die Pentecoſtes.

And to make the Reader believe that *Hugh Cyveliok* was not of age when he [43]ſealed the ſaid Deed of *Stivinghale*, he tells you pag. 86. of his firſt Book, and pag. 30. of his latter Book, that what Earl *Richard* then did, was according to the Law and *Cuſtoms* of thoſe elder Ages, and *that Earls and great Lords in thoſe former Ages did often join with their Mothers (who had the Tuition of them) in Deeds & Charters whiles they were very young, and before they attained the age of One and Twenty years;* whereas I am confident Sir *Peter* cannot prove, that perſons who were under age, did then uſe to join with their Mothers, and ſo give away their Lands of Inheritance; for Mr. *Selden* in his *Titles of Honour*, pag. 785. at the bottom, and pag. 786. (the place which Sir *Peter* cites) tells us, *that this of the Earl of* Cheſter, (*viz.* Earl *Richard*) *is only a Note of a Monk after the Entry of the Charter of* Confirmation, *and no part of the Body of the Charter; And in regard that he ſees no* other Teſtimony of ancient time *to ſecond it with the like, he ſhould think that the Monk was either groſly deceived in his reaſon of* Nondum enim Militari Balteo cinctus eſt, *or elſe that he meant only that the Earl was a Child within age, and that* [44]*by reaſon of his Minority, Wardſhip, and the Tuition of his Mother (who joineth with him in the Charter) her Seal was only uſed to it, as alſo to his Letters;* Alſo a little after, in the ſame page, Mr. *Selden* thus ſays, *Now the Law being that whoſoever was Knighted, though before the age of One and Twenty, was of full age in regard of any Wardſhip, or any other Tuition*

[Page 43.]

[Page 44.]

(as preſently is further ſhewed) and the uſe being that ſuch great Lords were Knighted often, before they were of that age, and ſo had their full age ſupplied; and that perhaps alſo, while they were in ward, they uſed only their Guardians Seals, leſt the authority of a

* Note. *Seal of their own, before they had diſcretion to uſe it, might have done them prejudice, in point of *honour at leaſt,* if not in matter of profit. *It is likely enough, that the Monk here took the phraſe of being* not Knighted, *to ſerve for being* not of full age; *So that the having of a Seal was not peculiar to this Order of Knighthood, but to ſuch only (of what condition ſoever) as were of full age:* Alſo Sir *Peter* doth not in either of his two new Books give you the *Charter* of this Earl *Richard* and his Mother, but

[Page 45.] only tells you of it in general terms; for he [45]cannot but ſee that it is not a ſelling or giving away any Land of Inheritance, but is only (according to Mr. *Selden*) *a confirming* of that Hyde of Land which *Droco de Andeleia* had given to *Abington* Church; And Mr. *Selden* a little after in the next page ſays, *though the wardſhip of the Body be ended (in the caſe of Knighting after the*

* Note. *death of the Tenant by receiving the Order of Knighthood) yet *the Land continues to the Lords,* until the full age of the Heir, *as if he had not received the Order.* What then is this to the Caſe of *Hugh Cyveliok*, who did paſs away *Stivinghale* to the Biſhop of *Cheſter*, and his Succeſſors for ever? And without doubt the ſaid Land was given immediately after the death of Earl *Randle*, Father to the ſaid *Hugh;* for he dying Excommunicate, his friends in that age, would be very impatient until he was abſolved; and it cannot be imagined that *Maude* did join with her ſon *Hugh*, becauſe he was under age; for that he could not be, becauſe he here paſſed away Lands for ever, as alſo becauſe he was old enough to take *Melyenith* Caſtle in the year 1142;

[Page 46.] and if he was then but 12 years of age, he would [46]be 23 years old in the year 1153, about which year his Father Earl *Randle* dyed; his Mother therefore certainly had *Stivinghale* (which is not in *Staffordſhire*, as Sir *Peter* in his 86 page ſuppoſeth, but is a Member of *Coventry*, as you may ſee in Mr. *Dugdale*'s *Anti-*

quities of Warwickſhire, pag. 88, 128, 129. and in Sir *Peter*'s *Hiſtorical Antiquities*, pag. 129.) as part of her Joynture, and thereupon joined with her Son; And indeed it had been a great ſhame to her if her Son *Hugh* had been ſuch a tender Infant as Sir *Peter* doth ſuppoſe him to be, to make him part with thoſe Lands, upon that occaſion (if it could have been ſo done) and ſhe to part with nothing at all.

But though I doubt not but what is here ſaid, will give full ſatisfaction to all judicious perſons, yet I think fit to acquaint the Reader that I have a *Pedigree* by me, of the Barons *de monte alto*, drawn not long ſince by Sir *Peter* himſelf, and written all with his own hand, in which he makes the firſt *Robert de Monte alto*, Steward of *Cheſhire* (who, he ſays, lived in the time of King *Steven*) to have iſſue (beſides other Sons who were youn-[47]ger) [Page 47.] two Sons, *Ralph* and *Robert*, who were afterwards ſucceſſively Stewards of *Cheſhire*, all which is certainly true.

He alſo in his *Hiſtorical Antiquities*, pag. 131. doth give you this Deed of Earl *Hugh*, in which his Mother doth not join with him, which I think fit in this place to Tranſcribe.

HUgo *Comes* Ceſtriæ, *Conſtabulario ſuo, Dapifero, omnibus Baronibus ſuis, omnibus Hominibus ſuis, Francis & Anglicis, tam futuris quam præſentibus, Salutem. Concedo Sanctimonialibus de* Bolintona *Stagnum meum de* Dunintona *firmum terræ meæ ſicut fuit tempore* Henrici *Regis, in perpetuam Elemoſynam pro anima mea, & Patris mei, & meorum Anteceſſorum: Et præcipio omnibus Hominibus meis, quod habeant meam firmam pacem, ita quod nullus inde prædictis Sanctimonialibus injuriam vel contumeliam faciat. Teſte* Roberto *Dapifero de* Monte alto, Filippo de Kima, Simone *Filio* Oſberti, Willielmo Patric, Radulfo *Filio* Warneri, Rogero de Maletot, *Johanne Priore de* Trentham, Orm *ejus Canonico*, Rogero *Monacho de* Hambi, Willielmo *Clerico Comitis qui Chartam ſcripſit apud* Beltesford, *& multis aliis.*

[Page 48.] 48Now that *Robert de Montealto* Steward of *Cheſhire*, who was Witneſs to this Deed, was the firſt *Robert de Montealto*, will be manifeſt, becauſe the ſecond *Robert* came not to be *Steward* of *Cheſhire* during the life of Earl *Hugh*, as appears by the ſaid *Pedigree*, as alſo in Sir *Peter*'s Book of *Hiſtorical Antiquities*, pag. 143. and in the 33 page of this Book, where you find *Ralph* the Steward, elder Brother to the ſecond *Robert*, outliving Earl *Hugh*, and being a Witneſs to a Deed of *Randle* Son to the ſaid *Hugh;* it will therefore neceſſarily follow, if this Deed of Earl *Hugh* was made immediately before the death of that *Robert de Montealto*, who was a Witneſs thereto, that the ſaid Earl *Hugh* was a great deal elder than his Wife *Bertred;* for though the ſaid *Robert* did live ſomething longer than Sir *Peter* doth take notice of, yet I think it cannot be proved that he was living any conſiderable time after the ſaid *Euſtace*, and I know no reaſon why we ſhould conclude that *Euſtace* was ſlain immediately after he was a Witneſs to the other Deed, or that this *Robert* dyed preſently after he was a Witneſs to this Deed; nay, I think it

[Page 49.] 49will appear, that the aforeſaid Deed to the Nuns of *Bolinton*, was certainly made ſome years before the ſaid *Robert* dyed, *viz.* in the time of King *Stephen;* for if it had been made when *Henry* the Second was King, Earl *Hugh* would not have ſaid *ſicut fuit tempore* Henrici *Regis*, (as he there doth) but he would have ſaid, *ſicut fuit tempore* Henrici *primi*, or elſe he would have uſed ſome other words to diſtinguiſh King *Henry* the firſt from the then King. Now King *Stephen* dying in the year 1154. and *Bertred* being not born till the year 1157. it will from this Deed be very clear, that if Earl *Hugh* had ſealed the ſaid Deed immediately before King *Stephen* dyed, yet Earl *Hugh* would be at the leaſt 24 years older than *Bertred* his Wife.

And whereas he pretends that he ſhews, (pag. 93.) that Earl *Hugh could neither be ſo old as I would now ſuppoſe him, nor yet that he was born Anno* 1142. I anſwer thereto, that any man who can but count 20. (*viz.* how long it is from the year 1109. to the year 1129. or from the year 1110. to the year 1130.) if he looks

on my *Defence of* Amicia, pag. 51. and my *Reply*, pag. 61, 62. may find that [50]*Hugh Cyveliok* might be older than I ſay: But I doubt Sir *Peter* is no good Arithmetician, as well becauſe of what he ſays here, as alſo becauſe he ſays in his *Hiſtorical Antiquities*, pag. 137. (which words you may alſo find before my *Defence of Amicia*, pag. 14.) *that he was eight years older than his Wife, when he was married;* whereas he is not now much above ſix years older, for as you may ſee in his *Hiſtorical Antiquities*, pag. 361. he was born the third of *March*, 1613. and his Lady was baptized the 23 day of *May*, 1620. And I believe Sir *Peter* will acknowledge he reckons his own birth, not according to the *Julian*, but according to the account of the Church of *England;* and if he ſhould ſay otherways, he might be eaſily confuted: for as you may find in the ſaid 361 page, he had a ſiſter named *Margaret*, who was born *September* 29, 1612. and buried at *Great Budworth*, *Octob.* 12, 1612. ſo that Sir *Peter* could not be born the third day of *March*, 1613. according to the *Julian* account; for then his birth would have been but a little above five months after his ſaid ſiſter was born. [Page 50.]

[51]And whereas in the 49, 50, 51, 52 pages of my *Anſwer* to his *Addenda*, I have proved out of the *Welſh Hiſtory* written by *Caradocus Llancaruan*, that *Hugh Cyveliok* in all probability had another Wife before *Bertred*, becauſe he could be no leſs than 41 years of age when he married her, (although we ſuppoſe that he married her ſo ſoon as ſhe was 14 years old) Sir *Peter* to avoid this proof, doth endeavour all he can to diſparage Dr. *Powell* who did put out the ſaid *Hiſtory*, and writ Notes thereon; but he was not ſo contemptible a perſon as Sir *Peter* would make him, for Mr. *Wood* in his *Hiſtory* and *Antiquities* of *Oxford*, lib. 2. pag. 319, doth call the ſaid Doctor, *Rerum Antiquarum rimatorem induſtrium, atque Hiſtoriarum Britannicarum peritiſſimum:* and Sir *Peter* doth alſo very well know that it is not the Doctor, but *Caradocus Llancaruan* which I do cite; he alſo will not ſuffer the ſaid Book to be read as it ſhould have been printed, but would have it read according as he doth pleaſe; which liberty if [Page 51.]

he may take, he hath very ill fortune, if he cannot keep it from ſaying any thing contrary to his own mind; then he will read it,
[Page 52.] not as it [52]ought to have been printed, but as it is miſprinted, and thinks he ſhews a great deal of skill, in proving that it cannot be true as it is miſprinted, which every one will confeſs as well as himſelf. And laſtly, although in his *Hiſtorical Antiquities* in the Fifth Chapter, concerning the Kings of *Wales*, and Princes of *Wales*, in which Chapter he did quote *Ingulphus*, *Ordericus*, *Cambden*, *Matthew Paris*, and others, and did tell you there in his 44 page, that in theſe *Welſh* matters, he did chiefly *follow the Welſh Hiſtory put out by Dr.* Powell, 1584. yet now he will alſo diſparage the ſaid *Hiſtory* all that he can.

But that he may ſeem to have ſome reaſon for what he ſays, he will tell you, that in that very place where *Caradocus* ſpeaks of taking *Melyenith*, he alſo ſays, that at that time King *Steven* took *Geffrey Mandevile* Priſoner at St. *Albons*, whereas *Mat: Paris* ſub anno 1142. ſays, it was *William Mandevile* who was there taken, and therefore he will not have *Caradocus* to be believed in other things; but this which Sir *Peter* here ſays will be of no force, firſt, becauſe though *Mat: Paris* be a very good
[Page 53.] Author, yet *Cara-*[53]*docus* (if there was nothing elſe in the Caſe) ought to be believed before the ſaid *Mat: Paris*, becauſe the ſaid *Caradocus* was living when the ſaid *Hugh* did win *Melyenith*, and when the ſaid *Geffrey de Mandevile* was taken Priſoner, whereas the ſaid *Mat: Paris* lived a long time afterwards, for he dyed in the year 1259. which was 117 years after that time; ſecondly, becauſe what *Caradocus* ſays concerning the ſaid *Geffrey* in his ſaid 197 page, is very true, whoſe words are theſe:

AT that time, (viz. 1142.) *King* Steven *took* Geffrey Mandevile *Priſoner at St.* Albon, *where the Earl of* Arundel *was like to be drowned by default of his Horſe; The Earl* Mandevile *gave to the King for his liberty, the Tower of* London, *with the Caſtles of* Walden *and* Plaſſey, *who afterward lived by ſpoil of Abbeys, and was ſlain in a skirmiſh againſt the King.*

Now that *Caradocus* doth not miſtake herein, will thus appear, If you look in *Henry* of *Huntington*, (who lived in the time of the ſaid King *Stephen*) pag. 393. line 15. you may thus read:

54 *EOdem anno cepit Rex* Gaufridum de Magnavilla *in Curia ſua apud ſanctum* Albanum *magis ſecundum retributionem nequitiæ conſulis, quam ſecundum jus gentium, magis ex neceſſitate quam ex honeſtate; Niſi enim hoc egiſſet, perfidia conſulis illius regno privatus fuiſſet; Igitur ut Rex eum liberaret, reddidit ei Turrim Londoniæ & Caſtellum de* Waledene *& illud de* Plaiſſeiz, *poſſeſſionibus igitur carens conſul prædictus invaſit Abbatiam* Rameſienſem *& Monachis expulſis raptores immiſit, & Eccleſiam Dei ſpeluncam fecit latronum.* [Page 54.]

Alſo if you peruſe the Hiſtory of *Simeon Dunelmenſis* (who lived in the time of the ſaid King *Steven*, and whoſe Hiſtory was continued for about 25 years by *John* Prior of *Hagulſted*) col. 273. line 15. you may thus read: *Galfridus enim de* Magnavilla *ejectis Monachis Monaſterio de* Ramesbi *abuſus eſt vice Caſtri.*

Alſo *Roger Hoveden* (who lived in the times of King *Henry* 2. *R.* 1. and King *John*, in his Annals printed at *Frankfurt*, 1601. pag. 488. l. 41.) thus ſays:

55 *ANno autem ipſo conſul* Gaufridus de Mandevilla *Regem validiſſime vexavit, & in omnibus valde glorioſus effulſit; Menſe autem Auguſti miraculum juſticia ſua dignum virtus divina monſtravit; Duos namque qui monachis evulſis Eccleſias Dei converterant in Caſtella, ſimiliter peccantes ſimili pœna mulctavit;* Robertus *namque* Marmiun *vir bellicoſus hoc in Eccleſia de* Coventree *perverſus exegerat; Porro* Gaufridus *ut diximus in Eccleſia* Rameſienſi *ſcelus idem patraverat.* [Page 55.]

And a little before in the ſaid page, he alſo tells how the ſaid *Geffrey* was taken Priſoner at St. *Albon*, and delivered the Tower

of *London*, and the Caſtles of **Wallinden** and **Plaſſeis** to the then King.

Alſo *Gulielmus Nubrigenſis* (who lived in the times of *R.* 1. and King *John*) thus writes, *lib.* 1. *cap. xi.*

EOdem tempore Rex Stephanus *cepit* Gaufridum de Magnavilla *in curia ſua apud* Sanctum Albanum: *non quidem honeſte & ſecundum jus pro merito ejus: & metu ſcilicet, quod expediret,*
[Page 56.] *quam quod* [56] *deceret plus attendens. Erat enim idem* Gaufridus *homo Audaciſſimus, & magnarum virium, ſimul & Artium: præclaram illam Arcem* Lundonienſem *cum duabus aliis Munitionibus non ignobilibus poſſidens, & ſubtili aſtutia ingentia moliens.*

And afterwards in the ſame Chapter he ſpeaks how the King did wreſt from the ſaid *Geffrey* the Tower of *London*, with his two other Caſtles, and alſo what the ſaid *Geffrey* did to the Monaſtery of *Rameſey*.

Alſo *Raph de Diceto*, who was Dean of *Pauls* in King *John*'s time, in his *Abbrev: Chronic:* col. 508. line 32. thus ſays:

1142.

STephanus *Rex* Gaufridum *de* Magnivilla *cepit in Curia ſua, qui ut liberaretur, reddidit turrim* Lundoniæ *& Caſtella ſua.*

Alſo *Gervaſius* a Benedictine Monk of *Canterbury* (who lived in the time of King *John*, col. 1360. line 7.) thus writes: M CX LIIII.

[Page 57.] [57] *REx* Stephanus *cepit Comitem* Gaufridum *de* Mandavilla *in Curia ſua apud ſanctum* Albanum, *magis ex neceſſitate, quam ex honeſtate, Niſi enim hoc feciſſet, ut a pluribus dicebatur, perfidia Comitis regno privandus eſſet. Captus itaque Comes nulla potuit occaſione liberari, niſi ſua Caſtella reſignans regiæ pareret voluntati. Reddidit ergo Turrim* Londoniæ *& Caſtellum de* Wal-

dene *& illud de Pleſſiz & liberatus eſt. Comes igitur munitionibus carens, & a Militari crudelitate ſe cohibere non valens; invaſit abbatiam de* Rameſeia, *& de Eccleſia Dei non veritus Juſtitiam, ſpeluncam fecit Latronum.*

Alſo *John Brompton* col. 1033. l. 1.

EOdem anno Comes Galfridus *de* Mandavilla *a Rege captus pro reſtitutione turris* Londonienſis *& Caſtelli de* Walde *poſtea liberatur, qui poſſeſſionibus carens, cum adhuc magnam haberet familiam confeſtim abbathiam* Sancti Benedicti *de* Rameſeye *invaſit & Monachis expulſis raptores immiſit, & ſanctum Monaſterium ſpeluncam fecit latronum.*

[Page 58.] [58]But I ſhall, after all this, ſhew you what *Mat: Paris* himſelf ſays in that Edition put out by Dr. *Wats*, pag. 79. which is the ſame place which Sir *Peter* doth cite, whoſe words are theſe:

EOdem tempore Rex Stephanus *cepit* Willielmem *de* Mandevilla *apud* Sanctum Albanum *unde reddidit Regi Turrim* Londoniarum *cum Caſtellis de* Waldene *& de* Pleſſiz *antequam a vinculis ſolveretur. Qui carens poſſeſſionibus paternis, invaſit abbatiam* Rameſienſem, *atque Monachis expulſis raptores immiſit.*

But on the other ſide of the Leaf, *viz. pag.* 80. *l.* 17. in the year 1143. he thus ſays:

EOdem anno Robertus Marmimi *vir bellicoſus qui Monachos* Coventrenſes *a ſuo Monaſterio expulerat, & de Eccleſia illa Caſtellum fecerat, dum contra hoſtes decertaret, inter prædones ſuos, ante ipſum Monaſterium, ſolus peremptus eſt, & excommunicatus morte depaſcitur ſempiterna. Eodem vero tempore* * Gaufridus *Conſul de* Mandavilla *qui idem ſcelus patraverat in Monaſte-*[59]*rio* *Rameſienſi *ante ipſam Eccleſiam inter Conſortes ſuorum acies, a pedite quodam viliſſimo ſolus*

* Note.

* Note. [Page 59.]

ſagitta percuſſus, occubuit interfectus, &c. So that the Reader may plainly ſee, how deceitfully Sir *Peter* doth here deal; for finding him in *Mat: Paris* called *William de Mandevile* on one ſide of the Leaf, (through either the ſlip of *Mat: Paris*'s Pen, or the Printer's negligence) he acquaints the Reader with that, but never tells him how he is on the other ſide of the Leaf called *Geffrey de Mandevile*. And that this was purpoſely done, may eaſily appear, becauſe if *Mat: Paris* had called him *William* on both ſides of the Leaf, yet *Caradocus*, who was then living, having called him *Geffrey*, Sir *Peter* ſhould have conſulted other Authors, to have ſeen which of them two had been in the right; but theſe ancient Authors being againſt him, it was a good way to let them alone.

I ſhall therefore leave it to the Reader to judge, whether *Caradocus Llancarvan* be not to be believed concerning *Hugh Cyveliok*'s taking of *Melyenith*, being the ſame was taken when
[Page 60.] he was living; as alſo whether it doth not certainly ap-[60]pear by that proof that *Hugh Cyveliok* was at the leaſt 41 years old when he married *Bertred*, and by conſequence in all probability imaginable had a former Wife, for which reaſon, (if the other proofs were laid aſide) there is no juſt cauſe to ſuſpect *Amicia* to be illegitimate, and with this I will conclude my *Anſwer* to his former Book.

In the *Latin* Epiſtle to the Judges, (which I ſuppoſe to be Sir *Peter*'s, though he doth not vouchſafe to ſet his name thereto) he ſaid I was the firſt Inſtigator of this Controverſie; but whether that be ſo or not, let the Reader judge by what I have ſaid in my Epiſtle before my *Defence* of *Amicia*, and in the ſecond and third pages of my *Reply*. Alſo in the ſame Epiſtle, when he doth appeal to the Judges, he doth not put the queſtion, Whether the Law was different in the time of *Glanvil* in this point of *free marriage* from what it is now? But he propoſeth this Queſtion, Whether or no in the time of *Glanvil*, by our ancient Law, it was lawful for any Man to give Land in *free marriage* with his Baſtard Daughter, although the Law being now changed, the

Law doth not at this day [61] permit a Gift in *frank marriage* with a Baſtard Daughter? By which he proves himſelf to be very like the Gentleman he ſpeaks of in the 14 pages of both his Books, *who would needs diſpute about a* Croſs, *and the queſtion muſt be——Whether the Croſs was a Croſs or no Croſs?* For if the Law be now clearly and certainly changed in this particular point of *frank marriage*, from what it was in the days of *Glanvil* (as he in his Queſtion abſolutely ſays it is) it is then as certain, that Lands might have been given in *free marriage* to thoſe not of the blood in the time of *Glanvil*, as it is certain, that a Croſs is a Croſs; (but this point muſt be otherwayes proved than by ſuch a frivolous queſtion as this is.) [Page 61.]

He alſo in the ſame Epiſtle, tells thoſe Reverend Judges, how highly he prefers Divinity before other Studies; but if he had been ſo converſant therein, as he would have them to believe, it ſeems ſtrange to me, that he hath not better learnt his duty to his deceaſed Grandmother; for we are bound to honour all our Parents, whether mediate or immediate; and whether they be living or dead: And I believe he will not find [62] any Precedent in Scripture, where any one did divulge the ſhame of any perſon, out of whoſe loyns he did deſcend, except that of wicked *Ham*, which pattern is in ſome reſpects exceeded by Sir *Peter;* for *Ham* did really find his Father naked: and when the other Sons of *Noah* had covered their Father with a Garment, he did not offer to reveal his Fathers nakedneſs again and again. [Page 62.]

As for his ſecond Book, which he directs to all the Judges of *England*, it ſo falls out, that there is nothing therein, but what is in his former Books, and is already anſwer'd; though if there had, I ſhould not have preſumed to have given any Anſwer thereto; becauſe thoſe learned perſons know well enough what the Law was, and is in all particulars, and cannot receive any information therein, either from Sir *Peter*, or me, or be deceived by his miſrecitals in his ſaid Books; However, I cannot but obſerve how ſlightly he ſpeaks of the Lord *Coke* in his 48 page, and alſo how he hath ſuch light expreſſions in his Book directed

to the Judges, as I believe were never uſed before by any perſon of diſcretion, to ſuch Reverend and Learned Men. No
[Page 63.] wonder therefore, if he ſpeak [63]courſely of me, and tell me of ſo many Impertinencies; but whether I be guilty of them, or of thoſe untruths, or of that opprobrious language, which he doth charge me with, let the indifferent Reader be Judge. And whereas it doth appear, that he is reſolved to have the laſt word, although he have nothing new to ſay; and that his Writing again be contrary both to his duty to his deceaſed Grandmother, and to his promiſe in Print: I do therefore declare, If what Sir *Peter* writes hereafter be no more to the purpoſe, than that is which he hath ſaid in his two (laſt) Books, that I will not appear in Print againſt him any more, but will chooſe to vindicate my Grandmother and my ſelf by word of mouth, whenſoever I ſhall have any opportunity ſo to do; only let me now acquaint the judicious Reader, that ſome other Judges have declared their opinion concerning the *Legitimacy of* Amicia, beſides thoſe three who formerly did ſo, and who were ſpoken of by Sir *Peter*, in the 49 page of the latter of his two laſt Books.

Baddeley, Febr. 15.
1 6 7 $\frac{4}{5}$.

T. M.

FINIS.

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Leycester, Peter

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